
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CINTHIA THEVENIN, individually, and as wife of EDSON THEVENIN,
Decedent, and as Administratrix of the Estate of EDSON THEVENIN,
and as mother and natural guardian of Infant N.T. and as mother and
natural guardian of Infant Z.T.,

Plaintiffs
against
THE CITY OF TROY and SERGEANT RANDALL FRENCH
Defendants

RECORD OF EXHIBITS "A" – "E"

PART 1

FITZGERALD MORRIS BAKER FRITH PC
Attorneys for Defendants
P.O. Box 2017
68 Warren St.
Glens Falls, New York 12801
(518) 745-1400

NOTICE OF CLAIM

In the Matter of the Claim of

CINTHIA THEVENIN, individually, and as wife of
EDSON THEVENIN, Decedent, and as proposed
Administratrix of the Estate of EDSON THEVENIN, and as
mother and natural guardian of Son VAMAR THEVENIN,
and as mother and natural guardian of Son NATHANIEL
THEVENIN.

Claimants,

-against-

THE CITY OF TROY, CITY OF TROY POLICE DEPARTMENT
SERGEANT RANDALL FRENCH, CAPTAIN MATTHEW
MONTANINO, POLICE CHIEF JOHN TEDESCO,
POLICE OFFICERS John Does 1-10 and JOEL ABELOVE, District Attorney

Respondents.



SIRS:

The Claimants above-captioned have a claim and hereby make claims for damages suffered by the Claimants, and in support thereof, the Claimants state as follows upon information and belief:

1. The name of the Claimant is Cinthia Thevenin. Mrs. Thevenin resides at 410 Vermont View Drive, Watervliet, New York 12189. Claimant is the surviving spouse of the Decedent, Edson Thevenin, and is the mother and natural guardian of Vamar Thevenin and Nathaniel Thevenin, the Decedent's surviving children, infants under the age of 18. She brings this claim on behalf of herself, her children, the Estate of her late husband, Edson Thevenin and his Distributees.

2. The name and post office address of the Claimants' attorneys are Michael Rose, Hach & Rose, 185 Madison Avenue, 14th Floor, New York, New York and Steven J. Harfenist, Harfenist, Kraut & Perlstein, 2975 Westchester Avenue, Suite 415, Purchase, New York.

3. The nature of the claim is for money damages for personal injuries: conscious pain and suffering; wrongful death; fear of impending death; loss of parental guidance and familial association; assault; battery; negligent infliction of emotional distress; intentional infliction of emotional distress; negligence; gross negligence; recklessness; pecuniary loss; loss of services: medical expenses; funeral expenses; negligent training; negligent supervision; failure to adequately discipline; failure to train; failure to supervise; civil rights violations under state and Federal law and the Constitutions of the State of New York, : use of excess force in violation of the state and federal constitutions; improper use of deadly force in violation of the New York State and United States constitution, including the fourth and eighth amendment; pursuant to 42 U.S.C. §§ 1983 and 1985; attorney's fees pursuant to 42 U.S.C. § 1988 and conspiracy to conceal evidence of the improper use of excessive force and conspiracy to immunize Sgt. French from criminal prosecution.

4. The claim arose on or about April 17, 2016 at approximately 3:15 a.m. when decedent, Edson Thevenin, was shot and killed by Police Officer, Sgt. Randy French, in or about the area of Hoosick Street, 6th Avenue, and Collar City Bridge, in the City of Troy, New York.

Upon information and belief, at the time of the incident, Mr. Thevenin was driving to his home when City of Troy Police Officers, including Sgt. French and Captain Matt Montanino, stopped him without probable cause. Thereafter, Sgt. French shot and killed Edson Thevenin without justification for the use of deadly force. Mr. Thevenin was unarmed at all times. Upon information and belief, Sgt. French fired no less than eight shots at the unarmed Mr. Thevenin.

Hours after the Decedent was shot and killed, Police Officers John Does 1-10 made false statements and deliberately misled Claimants and Decedent's family members into believing that the Decedent had been killed in a motor vehicle accident without reference to being shot by a Troy Police Officer. Claimant and Decedent's family only learned that the Decedent had been shot and killed when they went to the hospital. Claimants and Decedent's family were thereafter denied access to the Decedent's body for more than 24 hours after the shooting. In denying access to the body of the Decedent to his spouse and family after his death, and in deliberately withholding accurate information and misleading Claimants as to the facts leading to his death, Respondents intentionally and negligently inflicted severe emotional distress upon Claimants.

Upon information and belief, Respondents conspired with Joel Abelove, the Rensselaer County District Attorney and others to conceal the truth of the events of April 17, 2016 for the purpose of achieving certain collateral objectives including, but not limited to, avoiding liability, disciplinary charges and/or other civil and/or criminal consequences as against Sgt. French, Captain Montanino, Police Chief John Tedesco, Police Officer John Does 1-10, the City of Troy, and the City of Troy Police Department.

In particular, upon information and belief the Respondents presented the circumstances surrounding the shooting of Mr. Theveinen to a Rensselaer County Grand Jury without conducting a complete investigation, prior to conducting forensic evidence related to the shooting and failed to present to the Grand Jury two civilian witnesses who contradicted Sgt. French's basis for the use of deadly force.

5. This claim is for personal injuries, conscious pain and suffering, wrongful death, fear of impending death, loss of parental guidance and familial association, pecuniary loss, loss

of services, medical expenses, funeral expenses, and emotional distress sustained by the Decedent and Claimants in the sum of Twenty Five Million (\$25,000,0000) Dollars.

WHEREFORE, the Claimants respectfully demand judgment against the Respondents, their agents, employees and others acting under their control both individually and jointly in an amount to be determined upon the trial of this action in compensatory and punitive damages, together with such other and further relief as is just and proper, together with costs, disbursements, and attorneys' fees in connection with this action.

Dated: New York, New York
May 17, 2016

HARFENIST KRAUT & PERLSTEIN LLP
Attorneys for Claimants

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-----X

CINTHIA THEVENIN, individually, and as wife of
EDSON THEVENIN, Decedent, and as
Administratrix of the Estate of EDSON THEVENIN, and as
mother and natural guardian of Infant N.T.
and as mother and natural guardian of Infant Z.T,

DOCKET NO:
1:16-cv-1115 (NAM/DJS)

COMPLAINT

Plaintiffs,
-against-

**JURY TRIAL
DEMANDED**

THE CITY OF TROY, and SERGEANT RANDALL
FRENCH,

Defendants.

-----X

Plaintiffs, by their attorneys, Hach & Rose, LLP and Harfenist Kraut & Perlstein, LLP, complaining of the defendants, allege, upon information and belief, as follows:

INTRODUCTION

1. This action seeks redress for the death of Edson Thevenin, who died after being subjected to the use of excessive force and deadly force by Sergeant Randall French, a police officer employed by the City of Troy Police Department. As Mr. Thevenin was improperly subjected to excessive and deadly force in violation of his rights under the Fourth and Fourteenth amendments to the United States Constitution, as well as New York State law, the plaintiff brings claims against the individual defendant pursuant to 42 U.S.C. § 1983 and New York State law for money damages as well claims against the City of Troy under New York State Law and pursuant to 42 U.S.C. § 1983 for failing to train and supervise the individual defendant.

2. Put simply, French, in his individual and official capacities, assaulted, used excessive and deadly force, and shot the now deceased Edson Thevenin, causing his life to end and causing severe physical harm, extreme pain and suffering prior to his death, all in violation of his constitutional and civil rights.

JURISDICTION & VENUE

3. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1333(3) and (4) as the claims in this case arise under questions of Federal law for violations of the plaintiff's Fourth and Fourteenth Amendment, Court has jurisdiction of this action

4. Plaintiff further invokes the supplemental jurisdiction of this Court, pursuant to 28 U.S.C. §1367, to hear and decide any and all claims arising under state law.

5. The venue is proper within the United States District Court for the Northern District of New York in that the incident arose in the Northern District of New York.

6. Plaintiffs demand a trial by jury on each and every one of the claims in the Complaint.

PARTIES

7. The decedent, Edson Thevenin, ("Edson") was an African-American male who resided at 410 Vermont View Drive, Watervliet, New York.

8. The plaintiff, Cinthia Thevenin ("Cinthia"), the wife of Edson, at resides at 410 Vermont View Drive, Watervliet, New York.

9. The plaintiff, Infant N.T. ("N.T.") is the infant son of Edson and Cinthia, who also resides at 410 Vermont View Drive, Watervliet, New York.

10. The plaintiff, Infant Z.T. ("Z.T.") is the infant son of Edson and Cinthia, who resides at 410 Vermont View Drive, Watervliet, New York.

11. By order of the Honorable Stacy L. Pettit, Surrogate of Albany County, dated June 27, 2016, Cinthia was appointed Administratrix of the goods, chattels, and credits of Edson.

12. As such, Cinthia has filed suit both in her capacity as Administratrix of Edson's Estate and as mother and natural guardian of infants N.T. and Z.T.

13. Defendant, The City of Troy, at all times hereinafter mentioned is a municipal corporation duly organized and existing by virtue of the laws of the State of New York.

14. Defendant, Sergeant Randall French ("Sgt. French") at all relevant times was a police officer employed by the defendant The City of Troy.

15. In addition to the facts alleged in the following paragraphs, Sgt. French, sued in both his individual and official capacities, acted within the scope of his employment and under color of state law, to wit, under color of statutes, ordinances, regulations, policies, customs and usages of the State of New York and/or City of Troy.

NOTICE OF CLAIM

16. On May 23, 2016, a timely Notice of Claim was filed with the City of Troy in compliance with General Municipal Law § 50H.

17. The Notice of Claim was filed on behalf of the plaintiff, Cinthia Thevenin, individually and as wife of Edson Thevenin, Decedent, and as Administratrix of the Estate of Edson Thevenin, and as natural guardian of infants N.T. and Z.T.

18. More than thirty (30) days have elapsed since the Notice of Claim was filed and the City of Troy has failed to pay or adjust the claims.

19. On August 8, 2016, the City of Troy conducted a municipal hearing of Cinthia pursuant to New York General Municipal Law §50-h.

20. Plaintiffs have complied with all conditions precedent for the commencement of this action.

21. This action has been commenced within one (1) year and ninety (90) days after the happening of the events, upon which the State Law claims arise.

22. The defendant, City of Troy, its agents, servants and/or employees operated, maintained, and controlled a police force known as the Troy Police Department, including all the police officers employed therein.

23. That at all times hereinafter mentioned, defendant, Sgt. French was employed by the Troy Police Department.

24. Sgt. French is not entitled to qualified immunity or governmental immunity.

FACTUAL ALLEGATIONS

25. On April 17, 2016 at approximately 3:00 A.M., Edson was lawfully driving north along 6th Avenue in Troy, New York, on his way home.

26. At the time, Edson was unarmed and presented no threat to anyone.

27. While driving home, Edson was stopped by police officers, including Sgt. French who were employed by the City of Troy, without probable cause.

28. At no time was Sgt. French, or any member of the Troy Police Department in physical danger when French opened fire into Edson's car.

29. Sgt. French shot Edson without justification for the use of deadly force.

30. Upon information and belief, Sgt. French fired no less than eight shots at Edson.

31. As a result of the acts Sgt. French, Edson died from gunshot wounds.
32. At no time did Edson present a reasonable threat of imminent danger of death or serious bodily harm to Sgt. French, any police officers on the scene, or any member of the general public.
33. At no time did Edson take a position of attack or threatening towards Sgt. French, any police offices on the scene or any member of the general public or behave in any manner in which fatal force might have been justified.
34. The actions of Sgt. French were entirely unjustified and constituted excessive use of force.
35. The shooting of Edson by the Sgt. French was carried out in such a fashion that it demonstrated a lack of regard for Edson's right to be free from unnecessary and unlawful bodily harm or threats and without the due care and diligence which a prudent and reasonable officer would have displayed.
36. Sgt. French's actions were carried out willfully, maliciously and with such reckless disregard for the consequences as to reveal a conscious indifference to the clear risk of death to Edson.
37. By reason of aforementioned acts, Edson was caused to suffer severe physical injuries and pain and suffering resulting in death, including pre-death pain and suffering; emotional and psychological distress and horror.
38. Hours after Edson was shot and killed by Sgt. French, Troy Police Officers made false statements and deliberately misled members of Edson's family, including but not limited to Cinthia, into believing that Edson had been killed in a motor vehicle accident without reference to being shot by a Troy Police Officer.

39. Cinthia, and her family members, only discovered Edson's cause of death was gunshot wounds upon going to the hospital.

40. Edson's family members, including but not limited to Cinthia, were denied access to Edson's body for more than 24 hours after the shooting.

41. Edson is survived by his two infant sons, N.T. and Z.T.

42. The actions of Sgt. French and the members of the Troy Police Department were performed within the scope of their employment and authority for those acts was made by the City of Troy and therefore the City of Troy is liable under the doctrine of respondent superior.

43. The aforementioned acts by Sgt. French were performed knowingly, intentionally, and willfully and were not justified under the circumstances.

**COUNT I
(VIOLATION OF CIVIL RIGHTS PURSUANT TO §1983
4TH AND 14TH AMENDMENTS)**

44. Plaintiff repeats and realleges each and every allegation set forth in the forgoing paragraphs with the same force and effect as if more fully set forth at length herein.

45. On April 17, 2016, Sgt. French shot Edson without legal justification.

46. Pursuant to 42 U.S.C.A. § 1983 and the Fourth and Fourteenth Amendments to the United States Constitution, defendants, Sgt. French owed Edson a duty to act prudently and with reasonable care, and to otherwise avoid the use of unnecessary, unreasonable, excessive and deadly force.

47. Sgt. French, by unjustifiably shooting Edson, violated Edson's rights to be free from: (i) punishment and the deprivation of life and liberty without due process of law; and (ii) deliberate indifference to all of those rights under the Fourth and Fourteenth Amendments.

48. Sgt. French, along with other officers who were agents or employees of the City of Troy, fabricated and disseminated false accounts to Edson's family regarding the unjustified use of deadly force against Edson.

49. The use of excessive and deadly force by Sgt. French, was an independent violation of his rights guaranteed to him by the Fourth and Fourteenth Amendments to the United States Constitution.

50. At all aforementioned times, Sgt. French was acting under the color of law.

51. By reason of the forgoing, Cinthia, individually, and in her capacity as the wife of Edson, the Adminstratrix of Edson's estate and the mother and natural guardian of infants, N.T. and Z.T., demands judgment against defendant, Sgt. French, for violating Edson's rights under the Fourth and Fourteenth Amendments to the United States Constitution.

**COUNT II
(ASSAULT AND BATTERY)**

52. Plaintiff repeats and realleges each and every allegation set forth in the forgoing paragraphs with the same force and effect as if more fully set forth at length herein.

53. Sgt. French owed Edson a duty to act prudently and with reasonable care, to avoid the use of unnecessary and unreasonable force.

54. Sgt. French breached the aforementioned duties by among other things failing to: (i) communicate with Edson prior to using deadly force against Edson; (ii) follow police standards prior to applying deadly force; (iii) ascertain Edson's state of mind before shooting him; and (iv) using unnecessary deadly force constituting an assault and battery.

55. Sgt. French, committed an assault and battery on Edson by shooting and fatally injuring Edson.

56. At all aforementioned times, Sgt. French was acting within the scope of employment with the City of Troy.

57. As a result and proximate cause of the conduct of Sgt. French Edson died, resulting in pain, suffering, infliction of emotional distress, wrongful death, and fear of impending death.

58. Edson is survived by wife, Cinthia, and his two infant sons, N.T. and Z.T., who, by virtue of the conduct of Sgt. French are deprived of the financial support, companionship, comfort, support and guidance of Edson.

59. As a result of the conduct of Sgt. French, Cinthia incurred expenses in various and diverse amounts, and funeral and other expenses in connection with the burial of Edson and will necessarily incur expenses in the settlement of the estate of the decedent in various and diverse amounts.

60. By reason of the forgoing, Cinthia, individually, and in her capacity as the wife of Edson, the Adminstratrix of Edson's estate and the mother and natural guardian of infants, N.T. and Z.T., demands judgment for assault and battery against defendant, Sgt. French.

**COUNT IV
(WRONGFUL DEATH UNDER STATE LAW)**

61. Plaintiff repeats and realleges each and every allegation set forth in the forgoing paragraphs with the same force and effect as if more fully set forth at length herein.

62. On April 17, 2016 Edson died of gunshot wounds.

63. Edson's death was a direct consequence of being shot by Sgt. French.

64. Sgt. French was acting in his capacity as an employee of the City of Troy when his actions caused Edson's death.

65. Edson is survived by wife, Cinthia, and his two infant sons, N.T. and Z.T., who, by virtue of the conduct of defendant, Sgt. French, are deprived of the financial support, companionship, comfort, support and guidance of Edson.

66. As a result of the conduct of defendant, Sgt. French, Cinthia, necessarily incurred expenses in various and diverse amounts, and funeral and other expenses in connection with the burial of Edson, and will necessarily incur expenses in the settlement of the estate of the decedent in various and diverse amounts.

67. By reason of the forgoing, Cinthia, individually, and in her capacity as the wife of Edson, the Adminstratrix of Edson's estate and the mother and natural guardian of infants, N.T. and Z.T., demands judgment for wrongful death against defendants, Sgt. French, Capt. and the City of Troy.

**COUNT V
(CONSCIOUS PAIN AND SUFFERING UNDER STATE LAW)**

68. Plaintiff repeats and realleges each and every allegation set forth in the forgoing paragraphs with the same force and effect as if more fully set forth at length herein.

69. By reasons of the actions of Sgt. French and the City of Troy, hereinbefore alleged, Edson was caused and continued before his death to be sick, sore, lame, disabled, and suffered serious injuries in and about his head, body and limbs and died shortly thereafter. During that period, Edson suffered great pain and anguish, all to his damage in an amount to be determined by the Court.

**COUNT VI
(MONELL CLAIM FOR NEGLIGENT HIRING, TRAINING AND RETENTION
AGAINST THE CITY OF TROY)**

70. Plaintiff repeats and realleges each and every allegation set forth in the forgoing paragraphs with the same force and effect as if more fully set forth at length herein.

71. The City of Troy was aware that its employees, including police officers employed by the Troy Police Department, would encounter individuals who were suspected of committing non-violent misdemeanor or violation level offenses.

72. Despite issuing the police officers employed in the Troy Police Department lethal weapons, the City of Troy failed to properly train its police officers as to the proper usage of those weapons.

73. Despite issuing the police officers employed in the Troy Police Department lethal weapons, the City of Troy failed to properly interview and vet its officers to be certain that they did not have violent tendencies.

74. Despite issuing the police officers employed in the Troy Police Department lethal weapons, the City of Troy failed to properly train its officers and to instruct officers when lethal force should not be used against citizens not presenting a threat to any police officer or member of the public at large.

75. Included in the officers who were improperly trained, hired and retained, were Sgt. French.

76. As a proximate result of the City of Troy's unconstitutional policy of failing to properly train, hire and retain officers, including Sgt. French, Edson was subjected to unnecessary physical force which resulted in his death.

77. By reason of the forgoing, Cinthia, individually, and in her capacity as the wife of Edson, the Adminstratrix of Edson's estate and the mother and natural guardian of infants, N.T. and Z.T., demands judgment against the City of Troy.

PRAYER FOR RELIEF

WHEREFORE, as a direct and proximate cause of the actions of defendants described in the forgoing complaint, plaintiff decent, Edson Thevenin, and Cinthia Thevenin, individually, and as wife of Edson Thevenin, decedent, and as Adminstratrix of the Estate of Edson Thevenin, and as mother and natural guardian of infants N.T. and Z.T., individually, pray for relief against defendants as follows:

- A. Plaintiff, Cinthia Thevenin, individually, and as wife of Edson Thevenin, decedent, and as Adminstratrix of the Estate of Edson Thevenin, and as mother and natural guardian of infants N.T. and Z.T., claims damages for violation of civil rights under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1981, 1983 and 1985;
- B. Plaintiff, Cinthia Thevenin, individually, and as wife of Edson Thevenin, decedent, and as Adminstratrix of the Estate of Edson Thevenin, and as mother and natural guardian of infants N.T. and Z.T., claims damages on behalf of Edson Thevenin, for severe conscious pain and suffering and wrongful death;
- C. Plaintiff, Cinthia Thevenin, individually, and as wife of Edson Thevenin, decedent, and as Adminstratrix of the Estate of Edson Thevenin, and as mother and natural guardian of infants N.T. and Z.T., claims damages on behalf of Edson Thevenin, for loss of life and loss of enjoyment of life;
- D. Plaintiff, Cinthia Thevenin, individually, and as wife of Edson Thevenin, decedent, and as Adminstratrix of the Estate of Edson Thevenin, and as mother and natural guardian of infants N.T. and Z.T., claims damages for wrongful death, conscious pain and suffering pecuniary damages, loss of services, and loss of parental guidance;

- E. Plaintiff, Cinthia Thevenin, individually, and as wife of Edson Thevenin, decedent, and as Adminstratrix of the Estate of Edson Thevenin, and as mother and natural guardian of infants N.T. and Z.T., claims damages for assault and battery, negligence, negligent hiring, training and retention;
- F. Plaintiff, Cinthia Thevenin, individually, and as wife of Edson Thevenin, decedent, and as Adminstratrix of the Estate of Edson Thevenin, and as mother and natural guardian of infants N.T. and Z.T., claims damages for attorney's fees, costs, disbursements and expert fees under 42 U.S.C. §1983;
- G. Damages are claimed on behalf each plaintiff in an amount which a jury shall determine to be fair and equitable;
- H. All plaintiffs claim damages for punitive damages against the individual defendants, in an amount which a jury shall determine is appropriate to deter future similar conduct and such other and further relief as to this Court may seem just, equitable and proper.

Dated: September 13, 2016

Respectfully submitted,

HACH & ROSE LLP
Counsel for Plaintiffs

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CINTHIA THEVENIN, individually, and as wife of
EDSON THEVENIN, Decedent, and as Administratrix
Of the Estate of EDSON THEVENIN, and as mother
and natural guardian of Infant N.T. and as mother and
natural guardian of Infant Z.T.,

Plaintiffs,

DOCKET NO:
1:16-CV-1115(NAM/DJS)

ANSWER

-against-

THE CITY OF TROY, and SERGEANT RANDALL
FRENCH,

Defendants.

The Defendants, The City of Troy and Sergeant Randall French, answering the Complaint of the Plaintiffs herein, by their attorneys, FitzGerald Morris Baker Firth P.C., submit the following upon information and belief:

1. Admits the allegations contained in paragraphs numbered "13", "14", "15", "19", "21", "22", "23", "42", "50", "56", "62", "64" and "71" of the Complaint.
2. Denies the allegations contained in paragraphs numbered "2", "26", "28", "29", "32", "33", "34", "35", "36", "37", "38", "43", "45", "47", "48", "49", "54", "55", "57", "72", "73", "74", "75", "76" of the Complaint.
3. Denies the allegations contained in paragraphs numbered "1", "6", "24", "46", "51", "53", "60", "67", "69" and "77" of the Complaint, and refers all questions of law to the Court.
4. Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraph numbered "20" of the Complaint and refers all questions of law to the Court.
5. Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered "7", "8", "9", "10", "11", "12", "25", "30", "31", "39", "40", "41",

“58”, “59”, “63”, “65” and “66”, of the Complaint.

6. The allegations contained in the paragraphs numbered “3”, “4” and “5” of the Complaint characterize the legal action being brought and purport to invoke the jurisdiction of the Court pursuant to the enumerated statutes and, as such, the defendants make no answer save to demand strict proof thereof and to deny any conduct giving rise to any cause of action thereunder.

7. Denies knowledge or information sufficient to form a belief as to the allegations contained in the paragraphs numbered “16”, “17” and “18” of the Complaint, except admits receipt of purported notice of claim, and refer/refers all questions of law to the Court.

8. Denies the allegations contained in the paragraph numbered “27” of the Complaint, except admits that Edson was stopped by Sgt. French.

9. Denies the allegations contained in the paragraph numbered “64” of the Complaint, except admits that Sgt. French was acting in his capacity as an employee of the City of Troy.

10. Answering the paragraphs numbered “44”, “52”, “61”, “68” and “70” of the Complaint, Defendants repeat, reiterate and reallege each and every response to the recited paragraphs, with the same force and effect as if the same were set forth at length herein.

11. Denies all other allegations contained in the Complaint not specifically admitted or denied.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE
DEFENDANTS ALLEGE:**

That the Complaint fails to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE
DEFENDANTS ALLEGE:**

That if the plaintiffs were caused to sustain damages at the time and place set forth in the plaintiffs’ complaint, such injuries and/or damages were sustained by said plaintiffs in whole or in part by reason of the carelessness, recklessness, negligence and/or negligent act of omission or

commission of the culpable conduct of said plaintiffs, and defendants plead such culpable conduct and acts of negligence in diminution of damages.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
DEFENDANTS ALLEGE:**

That the Complaint fails to set forth facts sufficient to constitute a deprivation of any constitutional right or other basis for a civil rights claim.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That all the risks and dangers connected with the situation at the time and place mentioned in the complaint were open, obvious and apparent, and were known to and assumed by the plaintiffs herein.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
DEFENDANTS ALLEGE:**

That the doctrines of respondent superior and vicarious liability do not apply to a civil rights claim.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That the plaintiffs have received sums of money in settlement of the claims asserted herein, and that by reason thereof, the defendants are entitled to the protection, provisions and limitations of Section 15-108 of the General Obligations Law of the State of New York in reducing the claim of the plaintiffs against the defendants, by the amount stipulated in the Release, the amount of consideration paid for it or the amount of the released defendants' equitable share of the damages, whichever is the greatest.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

Upon information and belief, any past or future costs or expenses incurred or to be incurred by the plaintiffs for medical care, dental care, custodial care or rehabilitative services, loss of earnings or other economic loss, has been or will, with reasonable certainty, be replaced or indemnified in whole or in part from a collateral source as defined in Section 4545(c) of the New York Civil Practice Law and Rules and/or any claims for such items are barred by the defense of payment.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That this action is barred from the doctrines of qualified and/or absolute governmental immunity for discretionary acts.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That no policy, statement, ordinance, regulation or decision officially adopted and/or promulgated by defendants or otherwise ratified by defendants authorized a deprivation of plaintiffs' constitutional rights.

**AS AND FOR AN TENTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That no custom or usage adopted, followed, endorsed or ratified by defendants authorized a deprivation of plaintiffs' constitutional rights.

**AS AND FOR A ELEVENTH AFFIRMATIVE DEFENSE
DEFENDANTS ALLEGE:**

That Defendants' actions, if any, were justified by the facts and circumstances presented.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE
DEFENDANTS ALLEGE:**

That the arrest and/or detention, if any, were reasonable and based upon probable cause to believe that the Plaintiffs had committed a crime and/or offense.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That the defendants, at all times complained of, acted reasonably and in good faith in the discharge of their official duties and responsibilities.

That defendants acted in what they did solely pursuant to their duties and responsibilities as law enforcement and/or prosecuting officials.

That defendants at all times acted in good faith in that they reasonably believed that they were exercising and acting within their statutory and constitutional powers.

That in performing such duties and responsibilities, defendants are and were protected by absolute and/or qualified Federal and/or State immunity.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

To the extent that the complaint purports to set forth any pendent state law claims, they are barred by the plaintiffs' failure to comply with the statutory conditions precedent to commencement of an action against municipal defendants as set forth in the New York General Municipal Law.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That municipal defendants are not liable for punitive damage awards.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

Punitive damages violate the federal and state constitutions under the substantive and procedural due process clauses, equal protection clauses, excessive fine clauses, and cruel and unusual punishment clauses.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That this Court lacks jurisdiction over the defendants.

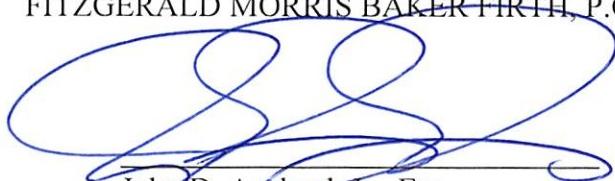
**AS AND FOR A EIGHTEENTH AFFIRMATIVE DEFENSE,
THE DEFENDANTS ALLEGE:**

That the plaintiffs lack standing or legal capacity to redress the rights, if any, of the Estate of Edson Thevenin.

WHEREFORE, Defendants demand judgment against the Plaintiffs dismissing the complaint, together with the costs, disbursements and reasonable attorneys' fee of this action, and for such other and further relief as this court deems just and proper.

Dated: October 12, 2016

Yours etc.,
~~FITZGERALD MORRIS BAKER FIRTH, P.C.~~



John D. Aspland, Jr., Esq.
Bar Roll No. 512134
Attorneys for Defendants
16 Pearl Street, P.O. Box 2017
Glens Falls, NY 12801
(518) 745-1400

TO: Michael A. Rose, Esq.
Hach & Rose, LLP
Attorneys for Plaintiffs
185 Madison Avenue
14th Floor
New York, NY 10016
(212) 779-0057

Steven J. Harfenist, Esq.
Harfenist Kraut & Perlstein LLP
Attorneys for Plaintiffs
3000 Marcus Avenue
Suite 2E1
Lake Success, NY 11042
(516) 355-9600

AMENDED NOTICE OF CLAIM

In the Matter of the Claim of

CINTHIA THEVENIN, individually, and as wife of
EDSON THEVENIN, Decedent, and as proposed
Administratrix of the Estate of EDSON THEVENIN, and as
mother and natural guardian of Son ZAMIR THEVENIN,
and as mother and natural guardian of Son NATHANIEL
THEVENIN,

Claimants,

-against-

THE CITY OF TROY, CITY OF TROY POLICE DEPARTMENT
SERGEANT RANDALL FRENCH, CAPTAIN MATTHEW
MONTANINO, POLICE CHIEF JOHN TEDESCO,
POLICE OFFICERS John Does 1-10 and JOEL ABELOVE, District Attorney

Respondents.

SIRS:

The Claimants above-captioned have a claim and hereby make claims for damages suffered by the Claimants, and in support thereof, the Claimants state as follows upon information and belief:

1. The name of the Claimant is Cinthia Thevenin. Mrs. Thevenin resides at 410 Vermont View Drive, Watervliet, New York 12189. Claimant is the surviving spouse of the Decedent, Edson Thevenin, and is the mother and natural guardian of Zamir Thevenin and Nathaniel Thevenin, the Decedent's surviving children, infants under the age of 18. She brings this claim on behalf or herself, her children, the Estate of her late husband, Edson Thevenin and his Distributees.

2. The name and post office address of the Claimants' attorneys are Michael Rose, Hach & Rose, 185 Madison Avenue, 14th Floor, New York, New York and Steven J. Harfenist, Harfenist, Kraut & Perlstein, 2975 Westchester Avenue, Suite 415, Purchase, New York.

3. The nature of the claim is for money damages for personal injuries; conscious pain and suffering; wrongful death; fear of impending death; loss of parental guidance and familial association; assault; battery; negligent infliction of emotional distress; intentional infliction of emotional distress; negligence; gross negligence; recklessness; pecuniary loss; loss of services; medical expenses; funeral expenses; negligent training; negligent supervision; failure to adequately discipline; failure to train; failure to supervise; civil rights violations under state and Federal law and the Constitutions of the State of New York, ; use of excess force in violation of the state and federal constitutions; improper use of deadly force in violation of the New York State and United Sates constitution, including the fourth and eighth amendment; pursuant to 42 U.S.C. §§ 1983 and 1985; attorney's fees pursuant to 42 U.S.C. § 1988 and conspiracy to conceal evidence of the improper use of excessive force and conspiracy to immunize Sgt. French from criminal prosecution.

4. The claim arose on or about April 17, 2016 at approximately 3:15 a.m. when decedent, Edson Thevenin, was shot and killed by Police Officer, Sgt. Randy French, in or about the area of Hoosick Street, 6th Avenue, and Collar City Bridge, in the City of Troy, New York.

Upon information and belief, at the time of the incident, Mr. Thevenin was driving to his home when City of Troy Police Officers, including Sgt. French and Captain Matt Montanino, stopped him without probable cause. Thereafter, Sgt. French shot and killed Edson Thevenin without justification for the use of deadly force. Mr. Thevenin was unarmed at all times. Upon information and belief, Sgt. French fired no less than eight shots at the unarmed Mr. Thevenin.

Hours after the Decedent was shot and killed, Police Officers John Does 1-10 made false statements and deliberately misled Claimants and Decedent's family members into believing that the Decedent had been killed in a motor vehicle accident without reference to being shot by a Troy Police Officer. Claimant and Decedent's family only learned that the Decedent had been shot and killed when they went to the hospital. Claimants and Decedent's family were thereafter denied access to the Decedent's body for more than 24 hours after the shooting. In denying access to the body of the Decedent to his spouse and family after his death, and in deliberately withholding accurate information and misleading Claimants as to the facts leading to his death, Respondents intentionally and negligently inflicted severe emotional distress upon Claimants.

Upon information and belief, Respondents conspired with Joel Abelove, the Rensselaer County District Attorney and others to conceal the truth of the events of April 17, 2016 for the purpose of achieving certain collateral objectives including, but not limited to, avoiding liability, disciplinary charges and/or other civil and/or criminal consequences as against Sgt. French, Captain Montanino, Police Chief John Tedesco, Police Officer John Does 1-10, the City of Troy, and the City of Troy Police Department.

In particular, upon information and belief the Respondents presented the circumstances surrounding the shooting of Mr. Thevenin to a Rensselaer County Grand Jury without conducting a complete investigation, prior to conducting forensic evidence related to the shooting and failed to present to the Grand Jury two civilian witnesses who contradicted Sgt. French's basis for the use of deadly force.

5. This claim is for personal injuries, conscious pain and suffering, wrongful death, fear of impending death, loss of parental guidance and familial association, pecuniary loss, loss

of services, medical expenses, funeral expenses, and emotional distress sustained by the Decedent and Claimants in the sum of Twenty Five Million (\$25,000,0000) Dollars.

WHEREFORE, the Claimants respectfully demand judgment against the Respondents, their agents, employees and others acting under their control both individually and jointly in an amount to be determined upon the trial of this action in compensatory and punitive damages, together with such other and further relief as is just and proper, together with costs, disbursements, and attorneys' fees in connection with this action.

Dated: New York, New York
May 2, 2017

HARFENIST KRAUT & PERLSTEIN LLP
Attorneys for Claimants

By: s/Steven J. Harfenist
Steven J. Harfenist
2975 Westchester Avenue, Suite 415
Purchase, New York 10577
Telephone: (914)701-0800

HACH & ROSE LLP
Attorneys for Claimants

By: Michael A. Rose
Michael A. Rose
185 Madison Avenue, 14th Floor
New York, New York 10016
Telephone: (212)779-0057

VERIFICATION

STATE OF NEW YORK)

ss:)

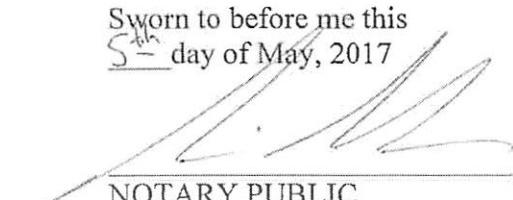
COUNTY OF _____)

CINTHIA THEVENIN, being duly sworn, deposes and says that she is the claimant herein; that he has read the foregoing notice of claim against THE CITY OF TROY, CITY OF TROY POLICE DEPARTMENT, SERGEANT RANDALL FRENCH, CAPTAIN MATTHEW MONTANINO, POLICE CHIEF JOHN TEDESCO, POLICE OFFICERS John Does 1-10 and JOEL ABELOVE, District Attorney, and knows the contents thereof; that the same is true to her own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters she believes to be true.



CINTHIA THEVENIN

Sworn to before me this
5th day of May, 2017


NOTARY PUBLIC

Javier Acevedo
Notary Public, State of New York
Qualified in Saratoga County
No. 01AC6262132
Commission Expires May 21, 20²⁰



 ORIGINAL

1

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT COURT OF NEW YORK

3 CINTHIA THEVENIN, individually, and as wife of
4 EDSON THEVENIN, Decedent, and as Administratrix of
the Estate of EDSON THEVENIN, and as mother and
natural guardian of Infant N.T., and as mother and
natural guardian of Infant Z.T.

5 Plaintiffs,

6

7 -against-

Index No.

8 16-CV-1115 (NAM/DJS)

9 THE CITY OF TROY and SERGEANT RANDALL FRENCH,

10 Defendants.

11

12 STENOGRAPHIC MINUTES OF DEPOSITION conducted of
13 RANDALL FRENCH, pursuant to Agreement, on the 28th day of
14 July, 2017, at the law offices of Fitzgerald Morris Baker
15 Firth, 16 Pearl Street, P.O. Box 2017, Glens Falls, New
16 York, commencing at 9:39 a.m.; before MICHELE AMBROSINO,
17 a Shorthand Reporter and Notary Public within and for the
18 State of New York.

19
20
21
22
23
24

1 APPEARANCES:

2 On behalf of Plaintiffs:

3 HARFENIST KRAUT & PERLSTEIN, LLP
4 3000 Marcus Avenue, Suite 11042
Lake Success, New York 11042
5 526.355.9612

6 BY: NEIL TORCZYNER, ESQ.
Ntorczyner@hkplaw.com

7 On behalf of Defendants:

8 FITZGERALD MORRIS BAKER FIRTH
9 16 Pearl Street
P.O. Box 2017
10 Glens Falls, New York 12801
518.745.1400

11 BY: JOHN D. ASPLAND, JR.
Jda@fmbf.law.com

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1 IT IS HEREBY STIPULATED AND AGREED by and
2 between the attorneys for the respective parties herein,
3 that filing and sealing be and the same are hereby
4 waived.

5

6

7 IT IS FURTHER STIPULATED AND AGREED that all
8 objections, except as to the form of the question, shall
9 be reserved to the time of the trial.

10

11

12 IT IS FURTHER STIPULATED AND AGREED that the
13 within deposition may be signed and sworn to before any
14 officer authorized to administer an oath, with the same
15 force and effect as if signed and sworn to before the
16 Court.

17

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24

1 RANDALL FRENCH,

2 (first duly sworn by the Notary Public,

3 was examined and testified as follows:)

4 MR. TORCZYNER: By counsel, we've had a
5 discussion prior to commencement of the
6 deposition. Because Sergeant French is still an
7 employee of the Troy Police Department we are not
8 seeking his home address. Counsel has agreed to
9 accept service of any process required on Sergeant
10 French's behalf, and we are not going to be
11 putting your home address on the record. So the
12 transcript will not reflect.

13 (An off-the-record discussion was held.)

14 EXAMINATION BY COUNSEL FOR THE PLAINTIFFS

15 BY MR. TORCZYNER:

16 Q. Good morning.

17 A. Good morning.

18 Q. My name is Neil Torczyner. I'm an attorney with
19 the firm of Harfenist Kraut & Perlstein, and we
20 together with the firm of Hach & Rose, represent
21 the plaintiffs in this lawsuit. I'm going to be
22 asking you a series of questions. It's important
23 that you keep your answer verbal, as the young
24 lady seated to your immediate left cannot take

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1 down shrugs of the shoulder or nods of the head.

2 If at any point during the deposition you
3 think that you don't understand a question that
4 I'm asking you, let me know, since you've been
5 sworn to tell the truth, every answer that you
6 give, we're going to assume it's accurately a
7 response to the question. So if you don't
8 understand the question, let me know.

9 The gentleman seated to your immediate right
10 is your attorney. At some point during the
11 deposition he may make an objection. If he does,
12 you can let us clarify whether or not you should
13 continue. In the event that your attorney gives
14 you an instruction not to answer the question,
15 then he and I will deal with that.

16 At some point during the deposition we may
17 ask you to leave the room. That's not so we can
18 talk about you behind your back, but it is so we
19 can clarify issues without influencing your
20 testimony.

21 If at any point during the deposition you
22 need a break, don't be shy, let us know. As long
23 as there isn't a question pending, of course
24 you're free to take a break, use the restroom,

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whatever else you might need to do.

Do you understand the instructions that I've given to you?

A. Yes.

Q. Are you under the influence of anything that would prevent you from understanding my questions and giving accurate answers to those questions?

A. No.

Q. Have you consumed any prescription medication in the last 24 hours?

A. Yes.

Q. And what prescription medication have you consumed?

A. Nexium and Celexa.

Q. And those are both related to digestive issues?

A. One's digestive, one's an antidepressant.

Q. Now, Celexa is the antidepressant?

A. Yes.

Q. Are you taking that pursuant to a prescription from a doctor?

A. Yes.

Q. Are you -- within the last seven days, have you taken that pursuant to the instructions, not missed or taken any additional pills?

RANDALL FRENCH - 07/28/17

1 A. Yes.

2 Q. Have you taken any nonprescription medication in
3 the last 24 hours?

4 A. No.

5 Q. Have you consumed any alcohol in the last six
6 hours?

7 A. No.

8 Q. Have you ever been a plaintiff in a lawsuit?

9 A. No.

10 Q. Other than the current lawsuit, have you ever
11 been a defendant in a lawsuit?

12 A. Yes.

13 Q. Was that with your employ of the Troy Police
14 Department?

15 A. Yes.

16 Q. How many lawsuits was that?

17 A. One.

18 Q. And how long ago was that lawsuit?

19 A. The incident was alleged to have occurred in
20 2010, but the trial took place September 2016.

21 Q. Where did that case go to trial?

22 A. Albany Federal Court.

23 Q. In the Northern District of New York?

24 A. Yes.

RANDALL FRENCH - 07/28/17

1 Q. What was the result of that trial?

2 A. We were cleared of any wrongdoing.

3 Q. And who was the plaintiff in that lawsuit, if you
4 know?

5 A. Michael Price.

6 Q. P-R-I-C-E?

7 A. Yes.

8 Q. And, if you know, what were the allegations
9 against you in that lawsuit?

10 A. It was alleged that his premises was targeted by
11 police and co-enforcement for not allowing him to
12 do remodeling, et cetera. As well, he alleged
13 that the police made an unlawful search and entry
14 of the premises following the shooting, that he
15 alleged that money was stolen during that entry.

16 Q. And you were one of the named defendants in that
17 lawsuit?

18 A. I was.

19 Q. Was there any allegation in that lawsuit that you
20 used a firearm in that event?

21 A. No.

22 Q. Did you testify at that trial?

23 A. Yes.

24 Q. Have you testified at any other trial besides

RANDALL FRENCH - 07/28/17

1 that trial?

2 A. Yes.

3 Q. Civil, criminal, both?

4 A. That was my only civil trial. The rest of the
5 trials I've been involved in are criminal.

6 Q. In Albany County Court or Albany City Court?

7 A. Rensselaer.

8 Q. Rensselaer County Court and Rensselaer City
9 Court?

10 MR. ASPLAND: Troy City Court?

11 A. Troy City Court, Rensselaer County.

12 Q. Thank you. About how many times have you
13 testified in criminal matters?

14 A. Approximately 50.

15 Q. Suppression hearings besides trials?

16 A. Yeah.

17 Q. And other -- I shouldn't assume. In the Michael
18 Price matter you testified at a deposition much
19 like we're doing today?

20 A. No.

21 Q. There were no depositions in that case?

22 A. There were not.

23 MR. TORCZYNER: Off the record.

24 (An off-the-record discussion was held.)

RANDALL FRENCH - 07/28/17

1 BY MR. TORCZYNER:

2 Q. Prior to testifying here today did you review any
3 documents?

4 A. No.

5 Q. Prior to testifying here today did you have
6 conversations with anyone about the events that
7 took place with Edson Thevenin on April 17, 2016,
8 other than with counsel seated to your immediate
9 right?

10 A. Yes.

11 Q. Who else did you speak with about it?

12 A. I've told numerous people who were curious about
13 it. People I work with: Sergeant Becker,
14 Detective McDonald, Captain Rick Sprague,
15 Sergeant Bornt, Sergeant White. I've told my
16 father, William French. I've told my wife,
17 friends, somebody -- that's Steven Holbert. I
18 know there are others; I just can't think of them
19 off the top of my head.

20 Q. Okay. I'm going narrow the question a little
21 bit, and I left it a little open-ended, so this
22 one's on me.

23 Within the last six months have you
24 discussed the incident with anyone?

RANDALL FRENCH - 07/28/17

1 A. No.

2 Q. And did you speak to anyone who was present on
3 the scene when the incident took place on
4 April 17, 2016, about that incident within the
5 last six months?

6 A. No.

7 Q. When did you first become employed by Troy?

8 A. July 18th, 2003.

9 Q. Is that your first job in law enforcement?

10 A. No, prior to that I was a part-time police
11 officer in the town of Stockbridge,
12 Massachusetts. It was just for a summer traffic
13 control job.

14 Q. And that was the first law enforcement job that
15 you had?

16 A. Yes.

17 Q. When were you employed at Stockbridge?

18 A. I went to the academy the spring of 1999. So it
19 was summer of '99, the summer of 2000, and I
20 think the summer of 2001.

21 Q. How old were you in the spring of '99?

22 A. 18.

23 Q. So you're born in and around 1981?

24 A. Yes.

RANDALL FRENCH - 07/28/17

1 Q. How tall are you?

2 A. Five-foot-eight.

3 Q. And your current weight, please.

4 A. 178 pounds.

5 Q. Back in April 2016 what was your approximate
6 weight?

7 A. 190.

8 Q. So after going and working for the Stockbridge,
9 Massachusetts Police Department part-time during
10 the summer, you became employed with Troy in July
11 of 2003. Did you have to take a civil test in
12 order to gain that employment?

13 A. Yes.

14 Q. Did you have to go through the police academy or
15 Zone 5, as it's called, after passing that test?

16 A. Yes.

17 Q. So this was not a lateral move within law
18 enforcement; correct?

19 A. No.

20 Q. How many months were you at Zone 5?

21 A. It was 22 weeks.

22 Q. And when you were first hired by the police
23 department, the Troy Police Department, what was
24 your official title?

RANDALL FRENCH - 07/28/17

1 A. Police officer.

2 Q. Did you have to go through a probationary period
3 after you were hired by Troy?

4 A. Yes.

5 Q. How long was that probationary period?

6 A. I do not know, but I believe at the time it was
7 only 12 weeks.

8 Q. Was that 12 weeks after Zone 5, or did that
9 include Zone 5?

10 A. That included Zone 5.

11 Q. So you were done with it before you were done
12 with Zone 5?

13 A. Yes.

14 Q. Following your completion of the Zone 5, did you
15 have a field training officer or something of
16 that nature with the Troy Police Department?

17 A. Yes.

18 Q. And who were your field training officer or
19 officers?

20 A. At the time it was Officer Montanino, who is now
21 Captain Montanino. And Officer Maloy, who is now
22 Sergeant Maloy.

23 Q. What's Sergeant's Maloy's first name?

24 A. Mark.

RANDALL FRENCH - 07/28/17

1 Q. And Sergeant Maloy's still employed by Troy?

2 A. Yes.

3 Q. When you were doing your field training were you
4 assigned to a particular platoon in the police
5 department?

6 A. When we discuss platoons, that means whether it's
7 days, afternoons, midnights?

8 Q. Yes.

9 A. I was assigned with Officer Montanino to the
10 afternoon platoon, what we call "third platoon."
11 When I was with Officer Maloy I was on the first
12 platoon, which is midnights -- would be the
13 midnight shift.

14 Q. Were you given any kind of specialized training
15 after you left Zone 5 while you were employed by
16 the Troy Police Department?

17 A. Yes.

18 Q. And what was that specialized training?

19 A. I was certified in the use of radar, lidar as
20 well as use of the DataMaster for what we
21 informally call it a "breathalyzer." As well as
22 I have been certified as a field training
23 officer, a natural topics instructor, a firearms
24 instructor, a mental health instructor. As well,

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1 I've taken and successfully passed both the basic
2 and advanced SWAT operator courses, weapons in
3 mass destruction SWAT operator course. I am a
4 rifle instructor. I think that's it.

5 Q. All right. I got to ask: What is a weapons in
6 mass destruction SWAT team certification?

7 A. It has to do with wearing what we call "SARATOGA
8 suits" which are chemical, biological,
9 radiological, nuclear suits, which is just a
10 uncomfortable suit which is lined with charcoal,
11 and then you have to wear a respirator. So it's
12 just how to do that, how to recognize what could
13 potentially be a CBRNE.

14 Q. Can you give me words for the acronym you just
15 gave?

16 A. Yeah. Chemical, biologically, radiological,
17 nuclear, and explosives. So it's just how to
18 operate around and amongst those things into it
19 while wearing the specialized gear.

20 Q. Thank you.

21 MR. TORCZYNER: Off the record.

22 (An off-the-record discussion was held.)

23 BY MR. TORCZYNER:

24 Q. When were you certified as a field training

RANDALL FRENCH - 07/28/17

1 officer?

2 A. Around 2007; that is a guess. It was around that
3 time.

4 Q. And when were you certified as a firearms
5 instructor?

6 A. 2006.

7 Q. Are you familiar with term -- I know that the
8 state police has it, called "technical sergeant"?

9 A. I've heard of it.

10 Q. Okay. Because if I were to tell you that a
11 technical sergeant in the state police is the one
12 that -- is the individual that test fires weapons
13 for purposes of ballistics, and also certifies or
14 recertifies officers for purposes of their
15 firearm use.

16 And at a time when they were doing the
17 database for the striations on bullets was doing
18 the firing for that, is that a job that you would
19 have done, or is that something different?

20 A. That is different. I do -- I failed to mention,
21 I'm also an armorer for SIG Saur, which means I'm
22 certified to diagnose problems and make repairs
23 to handguns.

24 Q. But that's a private certification; correct?

RANDALL FRENCH - 07/28/17

1 A. It is, but I also -- one of my duties as a
2 firearm instructor would be to -- if we take a
3 criminal firearm off of the street, I do test
4 fires for checking for function and that a
5 firearm is in working order to testify to.

6 Q. Have you ever testified as an expert in a civil
7 trial?

8 A. No.

9 Q. Have you ever testified in a criminal trial as
10 far as procedures followed by the police
11 department, the Troy Police Department?

12 A. No.

13 Q. You mentioned a certification in mental health.
14 What was that?

15 A. It was a course that was held at Zone 5 on how to
16 train officers to deal with mentally ill or
17 emotionally disturbed persons.

18 Q. How long was that course?

19 A. One week.

20 Q. Did you receive any form of training dealing with
21 individuals who are high on drugs?

22 A. No.

23 Q. Okay. Leaving aside the mental health element of
24 that course or the mental health course, did you

RANDALL FRENCH - 07/28/17

1 receive any training with Zone 5 or in any other
2 capacity, to how deal with individuals who were
3 high on drugs?

4 A. Not that I recall.

5 Q. Did you receive any form of training on how to
6 deal with individuals who were intoxicated other
7 than obviously to diagnose that they were
8 intoxicated through your breathalyzer training?

9 A. I just ask for clarification: What do you mean
10 with "how to deal with"?

11 Q. Well, it's a fair question. I'll clarify it: In
12 the event that you're dealing with a person who
13 you suspect is intoxicated and unable to
14 understand your instructions, were you given
15 training how to deal with that person?

16 A. During the course for standardized field sobriety
17 tests in the academy they did emphasize that
18 people who are intoxicated, you know, to try be
19 clear in your instructions, repeat if necessary
20 because they may not understand, to be calm.
21 Things of that nature.

22 Q. Okay. And as part of this training with Zone 5,
23 were you given any instructions to how to deal
24 with individuals who were so intoxicated that

RANDALL FRENCH - 07/28/17

1 they're incapable of understanding your
2 instructions even if you repeated it clearly?

3 A. Again, just emphasizing on clear instructions, do
4 the best that you can.

5 Q. Have you held any other positions with the Troy
6 Police Department other than police officer?

7 A. Yes, I have been -- yes, is the answer.

8 Q. What other positions, other than police officer,
9 have you attained with the Troy Police
10 Department?

11 A. I have been a patrol sergeant as well as a
12 detective sergeant.

13 Q. Which came first, patrol sergeant or detective
14 sergeant?

15 A. Patrol.

16 Q. And when did you attain the rank of patrol
17 sergeant?

18 A. July 2009.

19 Q. Did you have to pass a test in order to become a
20 patrol sergeant?

21 A. Yes.

22 Q. What test was that?

23 A. That's the state civil service sergeant test.

24 Q. Who administered that test?

RANDALL FRENCH - 07/28/17

1 A. City of Troy.

2 Q. How many times did you take that test?

3 A. Once.

4 Q. In order to become a detective sergeant, did you
5 have to take a different test?

6 A. No.

7 Q. And when did you attain the rank of detective
8 sergeant?

9 A. April 2011.

10 Q. As detective sergeant, were you -- withdrawn.

11 Is your current title still detective
12 sergeant?

13 A. I am now again a detective sergeant.

14 Q. Did you have a role between when you were named
15 detective sergeant in April of '11 and the
16 present date that you were not a detective
17 sergeant?

18 A. In our department it is not a promotion to be a
19 detective. It's a bid position. So at the time
20 I bid in there, and I was bumped out by seniority
21 in September of 2014 at which time I returned to
22 being a patrol sergeant.

23 Q. For what time period were you a patrol sergeant?

24 A. From September 2014 until May or June of 2016

RANDALL FRENCH - 07/28/17

1 when we did a rebid.

2 Q. As detective sergeant, are you a -- withdrawn.

3 What are your duties and responsibilities as
4 a detective sergeant?

5 A. The same as a detective: Just follow up on
6 reports that have already been taken. Anything
7 that requires greater investigation than what the
8 patrol officer's done who's completed the initial
9 report, bringing them through to their logical
10 conclusion, whether that be through arrest or
11 just closed out by investigation as well as
12 respond to dynamic scenes, such as a homicide or
13 shooting scene. Just start investigations at the
14 outset.

15 Q. As detective sergeant were you a superior officer
16 to other detectives in the detective unit?

17 A. By virtue of the rank, yes, but nobody reported
18 to me.

19 Q. As a patrol sergeant you were superior officer to
20 P2 patrolmen; correct?

21 A. Yes.

22 MR. TORCZYNER: Off the record.

23 (An off-the-record discussion was held.)

24 BY MR. TORCZYNER:

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1 Q. In and around April of 2016 you were, in fact, a
2 patrol sergeant?

3 A. Yes.

4 Q. And you were assigned to a particular platoon?

5 A. Yes.

6 Q. And which platoon was that?

7 A. It's the first platoon.

8 Q. And that's, again, the midnight shift, so to
9 speak?

10 A. Yes.

11 Q. And what were your duties and responsibilities as
12 patrol sergeant?

13 A. To perform roll call for the start of the shift,
14 sometimes for the early lineup, which happens at
15 11:30. Always for the early lineup. Sometimes I
16 would have to do the late lineup, which would be
17 at midnights.

18 During lineup we go by seniority and bid out
19 any open spots that need to be filled by the
20 extra officers or evidence technicians, read out
21 bulletins that were on the roll call clipboard,
22 address any questions that the officers may have,
23 record what vehicles they were taking, any
24 specialized equipment, such as if they were

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1 carrying a rifle or shotgun or Taser, and
2 indicate that on the roll call, the platoon
3 sheet, the worksheet, is what we call it.

4 Then once on the road, my job was to ensure
5 the officers were doing their job appropriately.
6 I would have to respond to scenes if they
7 required a large patrol response to coordinate
8 their efforts as well as I had to review and
9 approve any reports that patrol officers
10 generated.

11 Q. Was part of your function to be a desk sergeant
12 as well, or were you more out on patrol?

13 A. My bid position was to be road patrol sergeant.
14 If the desk sergeant was off we would take turns
15 sitting at the desk to fill in for the desk
16 sergeant.

17 Q. Okay. Who's "we" that would take turns?

18 A. There's three patrol sergeants assigned to this
19 shift, so it would be us three. Or if there's
20 only one road sergeant, then the desk sergeant
21 position would be filled at the time.

22 Q. Okay. I'll start with the roll call sheet.

23 (Plaintiffs' French Exhibit 1 was marked for
24 identification.)

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1 Q. I'm going to show you now a document that's
2 marked French 1 for purposes of identification.

3 Take a look at it, and let me know when you're
4 done, please.

5 A. I am done.

6 Q. Okay. Is this the daily sheet for April 17th,
7 2016?

8 A. Yes.

9 Q. Have you seen this before?

10 A. Yes.

11 Q. Did you complete this?

12 A. Parts of it.

13 Q. Well, the typewritten part you did not complete;
14 correct?

15 A. Correct.

16 Q. Okay. The handwritten part, are those all
17 entries from you?

18 A. No. Some are, some are not.

19 Q. Which entries did you make?

20 A. I made all of the vehicle assignments. I wrote
21 in the 301 Fitch, 302 Daurio, and I believe
22 that's it. And the checkmarks for -- where under
23 "SGTASUPR," for late, I completed those
24 checkmarks.

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1 Q. Now, when it says "late," you were talking about
2 11:30 and 12. That's not that those people came
3 late, it's that their shifts started later;
4 correct?

5 A. That is correct.

6 Q. Okay. So how was the shift staggered?

7 A. The way it is done on paper, if everybody comes
8 to work as expected, the officers working Zone 1
9 and Zone 2 are early so they would work 11:30 to
10 7:30. Those working Zones 3 and 4 are late, they
11 would work midnight to 8 a.m.

12 Q. Is there a reason why Zones 1 and 2 are staggered
13 separately?

14 A. It's the way the table organization is created,
15 that the south cars are the, quote/unquote, early
16 cars, and the north cars are the, quote/unquote,
17 late cars.

18 Q. Is there any particular concentration of officers
19 in the south, or it just happens to be that
20 something's got to be first, so they're first?

21 A. The city is split up into four zones, and there's
22 two officers per zone. I do not know the
23 reasoning on why the north cars are late, and the
24 south cars are early.

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1 Q. This indicates that the desk sergeant was McNall.

2 What's McNall's first name?

3 A. Joseph.

4 Q. Did you ever talk to Joseph McNall about the
5 events with Edson Thevenin from April 17th, 2016?

6 A. Not that I recall.

7 Q. Did you actually do the roll call on April 17th,
8 2016?

9 A. Yes.

10 Q. Do you recall anything from the roll call?

11 A. No.

12 Q. Let's talk about the general procedure for the
13 roll call.

14 You mentioned a number of things that you
15 did including reading things from the clipboard?

16 A. Yes.

17 Q. Was the clipboard like an actual
18 eight-and-a-half-by-fourteen physical clipboard?

19 A. Yes.

20 Q. Who decided what went on that clipboard?

21 A. There was no necessary rhyme or reason to it
22 unless a directive came from an administrator
23 saying, Put this on the roll call clipboard.

24 Otherwise, if somebody felt that something was

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1 noteworthy, they would put it on there
2 themselves.

3 Q. Was it your discretion to use the clipboard?

4 A. No.

5 Q. Withdrawn.

6 Was it your discretion to -- did you have
7 discretion as to what went on the clipboard?

8 A. No.

9 Q. So basically you were handed a clipboard and
10 that's what you had to read?

11 A. Yes.

12 Q. Okay. When you were done reading whatever was on
13 the clipboard, what happened to the material that
14 had been on the clipboard?

15 A. I returned the clipboard to a hook. I did not
16 have any control of what was on it or where it
17 went afterwards.

18 Q. Do you have knowledge about where the material
19 from the clipboard went after a shift ended?

20 A. It was generally left on there for the next
21 shift.

22 Q. Okay. Was there a file in the police station
23 where old material from the clipboard was then
24 filed, to your knowledge?

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1 A. If there were officer safety notices, they are
2 put in a binder in the record's unit. The other
3 items were discarded.

4 Q. What is an "officer safety notice"?

5 A. If an officer or detective or another agency
6 would give us information that a particular
7 person may be in possession of a firearm, it was
8 given out as a notice just as an FYI that if you
9 encounter this person they may be armed.

10 Q. Do you recall any of the information that you
11 gave the officer during the roll call for the
12 first platoon, the April 17th, 2016?

13 A. No.

14 Q. So I'm looking at the zone assignments that are
15 there, and you have two officers in the first,
16 two officers in the second, two officers in the
17 third, and two officers in the fourth; correct?

18 A. Yes.

19 Q. What does above Feeley, "CT 0600 to 0800" mean?

20 A. Means he is taking comp time from 0600 to 0800.

21 Q. And who would be covering his shift at that
22 point, if you know?

23 A. Nobody -- well, I apologize. Since we have an
24 extra evidence technician, 311 Officer Marble

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1 would cover Zone 4.

2 Q. As an evidence technician, what is Officer
3 Marble's post if there's nothing that requires to
4 be gathered?

5 A. He is just a citywide evidence technician. So if
6 officers are tied up in a particular zone, he
7 could respond as an additional officer. But
8 otherwise he would not be given calls so he could
9 be available to do evidence technician work.

10 Q. And during this time that he's available to be
11 given technical work or evidence technician work,
12 where is he sitting; is he out on patrol; is he
13 in the station waiting for the call?

14 A. He's on patrol.

15 Q. Now, it lists extras and written in hand is Fitch
16 and typed is Daurio.

17 A. Yes.

18 Q. What does "extras" mean?

19 A. Extras are -- again, we have some officers that
20 have straight bid positions, such as Officers
21 Gaudette, Pollay, Dean, and Parker; they always
22 work that zone in that spot. We have other
23 officers who have bid extra positions. So their
24 job is they're not assigned to a particular zone.

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1 Their job would be to fill in if the zone officer
2 takes the night off. Or if all the zone officers
3 are in, then they'd be given an extra assignment,
4 which is what you would see if we had them under
5 the 501, 502, or 503 position.

6 Q. So although Fitch and Daurio were extras, they
7 were actually in-service because there were
8 people off that night?

9 A. Correct. Officer Fitch is an evidence
10 technician, so that's why he's handwritten in
11 there. Because if you look up under "evidence
12 technician," you'll see that it's whited out
13 because his name was typed in there. But
14 officers took the night off so he got moved to an
15 extra spot.

16 MR. TORCZYNER: Let's go off for one second.

17 (An off-the-record discussion was held.)

18 BY MR. TORCZYNER:

19 Q. "EDPRT," what does that stand for?

20 A. Emotionally disturbed person's response team.

21 Q. Okay

22 A. Yes.

23 Q. Some of which are not actually on this daily

24 sheet other than EDPRT members.

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1 Is there a specific EDPRT team?

2 A. No.

3 Q. So what does it means that a person's listed here
4 as an EDPRT member?

5 A. These officers have taken additional training in
6 dealing with emotionally disturbed persons. And
7 if a call for an emotionally disturbed person
8 comes up and an officer who is one of the members
9 is close enough without undo delay, they respond
10 and handle that call over an officer that does
11 not have that training.

12 Q. And if they were off duty would they be assigned
13 to go and respond, or if they were on duty?

14 A. Only if they're on duty.

15 Q. So the people that are listed here like, for
16 instance, Merola, M-E-R-O-L-A, he's not listed
17 anywhere on this sheet. So since he wasn't on
18 that night, had there been a call on an
19 emotionally disturbed person, he would not have
20 responded?

21 A. Correct.

22 Q. Are there any females on this sheet?

23 A. For that night, no.

24 Q. Are there any females that are EDPRT members?

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- 1 A. Not on our shift or that shift.
- 2 Q. Any members of this first platoon daily sheet
- 3 that are minorities, to your knowledge?
- 4 A. Yes, Officer Fitch is black.
- 5 Q. Okay. Is he the only officer on this sheet
- 6 that's a minority, to your knowledge?
- 7 A. Yes, he is.
- 8 Q. Was there a requirement in order to become a
- 9 sergeant, that a person was required to be
- 10 trained for EDPRT?
- 11 A. No.
- 12 Q. Did you ever attempt to undergo the EDPRT
- 13 training?
- 14 A. I could not make the schedule work when the
- 15 trainings would come around.
- 16 Q. I may have asked you this before and I apologize
- 17 for asking again: Do you recall any of the
- 18 instructions you gave during roll call that night
- 19 as far as things to look out for or bulletins?
- 20 A. No.
- 21 Q. Periodically would the Troy Police Department do
- 22 a DWI crackdown?
- 23 A. Yes.
- 24 Q. Okay. Would that be something typically that

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1 would be in a roll call?

2 A. No.

3 Q. That wouldn't be an instruction during roll call,
4 "we're looking to crackdown on -- you know, it's
5 July 4th weekend, we're looking to crackdown on
6 people that are driving drunk or something of
7 that nature"?

8 A. No, if they were going to do that there'd be DWI
9 details with the traffic officers and officer on
10 overtime. They would not be put on the patrol
11 officers working the shift to do.

12 Q. So based upon the daily sheet that we have in
13 front of us that's marked as French 1, it doesn't
14 appear that there was a DWI detail that evening?

15 A. It does not appear.

16 Q. And to your recollection there was no DWI detail
17 that evening?

18 A. Not that I know of.

19 Q. So your commanding officer, that was
20 Captain Montanino; correct?

21 A. Yes.

22 Q. And desk Sergeant McNall was parallel to you?

23 A. Technically, in the hierarchy the patrol sergeant
24 is higher than the desk sergeant even though we

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1 are both sergeants.

2 Q. Okay. Does that mean that Sergeant McNall
3 reported to you, or just that you are higher than
4 him in rank?

5 A. Just that -- anything to do with the station, the
6 desk sergeant is responsible for. Anything on
7 the road, the road sergeant would make the
8 designation. But we have in our chain of
9 command, they just list patrol sergeant above
10 desk sergeant. We are both sergeants. We both
11 have our own areas that we're responsible for,
12 but just by virtue of our organization they list
13 the patrol sergeant higher than the desk. But
14 no, he does not report to me.

15 Q. Are you still on active duty?

16 A. No.

17 Q. When you were promoted to -- or when you received
18 the bid, to use the term that you've been using,
19 to become a detective sergeant in April, June of
20 2016 -- I'm sorry. When you received the
21 successful bid to become detective sergeant in
22 May or June 2016, did you subsequently, to
23 receiving that bid, supervise or in any way
24 interact with the detective unit?

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1 A. No.

2 Q. How does one receive the bid, or how does one bid
3 to become detective sergeant?

4 A. When we bid, we're supposed to do it every year.

5 Officer -- we have some positions that we call
6 are a fixed bid position, which typically a
7 detective is a fixed bid position, meaning you
8 cannot get bumped out, unless there is a change
9 to the bid or with the table organization. Then
10 all spots are open.

11 So there are sergeant spots and they're
12 patrol officer spots. The training of human
13 resources captain just starts at the top of the
14 list as either sergeant or patrol officer, calls
15 the senior-most officer, tells them what
16 positions are open, they bid, and he works his
17 way down the list.

18 Q. So in this case for 2016, when did you put in
19 your bid to become a detective sergeant?

20 A. It was when the phone call came. I don't
21 actually submit anything. Everything is done
22 over the phone. The training and human resources
23 captain called me and told me what positions were
24 open and which ones I wanted. Or which one I

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1 wanted, and I chose the detective's position.

2 Q. And when did you make that choice; do you
3 remember?

4 A. It was either May or June of 2016.

5 Q. Okay. Back on April 17th, 2016, did you have a
6 second in command to you; was there someone that
7 reported to you from patrol, or were they all
8 parallel working underneath you?

9 A. They were all parallel.

10 Q. And that night Captain Montanino was your
11 superior; correct?

12 A. Yes.

13 Q. Was there anyone in the chain of command who was
14 on duty in the station house senior to Captain
15 Montanino that evening?

16 A. No.

17 Q. Was anyone on patrol that evening, meaning, first
18 platoon shift for Sunday, April 17th, 2016, who
19 is senior to Captain Montanino?

20 A. No.

21 Q. So we've been talking around Edson Thevenin. You
22 now know who Edson Thevenin is; correct?

23 A. Yes.

24 Q. Prior to April 17th, 2016, did you know who Edson

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1 Thevenin is -- was?

2 A. No.

3 Q. Had you ever met, to your knowledge, prior to
4 April 17th, 2016?

5 A. Not that I recall.

6 Q. But if I refer to him now by the name
7 Edson Thevenin, you'll know who I'm speaking of;
8 correct?

9 A. Yes.

10 Q. The events that involved yourself and Edson
11 Thevenin ended in a shooting that took place in
12 around 3:30 in the morning approximately on
13 April 17th, 2016; correct?

14 A. Yes.

15 Q. If I'm going to refer to the event as "an
16 officer-involved shooting," would you know what I
17 was referring to?

18 A. Yes.

19 Q. Do you know whether the officer-involved shooting
20 which you were involved with was investigated by
21 the Troy Police Department?

22 A. Yes.

23 Q. And who investigated it for the Troy Police
24 Department?

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- 1 A. Sergeant Bornt and Sergeant White.
- 2 Q. Does the Troy Police Department have an IAB?
- 3 A. Yes.
- 4 Q. Are either of the two names you mentioned
- 5 detailed to the IAB?
- 6 A. No.
- 7 Q. Did the Internal Affairs Bureau investigate the
- 8 officer-involved shooting that you were involved
- 9 with as well?
- 10 A. Yes.
- 11 Q. And, to your knowledge, who investigated from
- 12 IAB?
- 13 A. Captain Centanni.
- 14 Q. Can you spell that, please.
- 15 A. C-E-N-T-A-N-N-I.
- 16 Q. C-E-N-T-A-N-N-I?
- 17 A. Yes.
- 18 Q. Thank you. And what's Captain Centanni's first
- 19 name?
- 20 A. Joseph.
- 21 Q. And Sergeant Bornt's first name, please.
- 22 A. Patrick.
- 23 Q. And, lastly, Sergeant White's first name, please.
- 24 A. Raymond.

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1 Q. Did you discuss the events that took place in the
2 officer-involved shooting with Captain Joseph
3 Centanni?

4 A. No.

5 Q. Did Captain Joseph Centanni ask you to speak to
6 him about the events that took place?

7 A. No.

8 Q. Did you ask Captain Centanni for permission to
9 discuss the events with him?

10 MR. ASPLAND: I don't know if I understand
11 the question.

12 Q. Did you approach Captain Centanni and ask him
13 whether you could discuss the events from that
14 night with him?

15 A. We had an appointment for an internal affairs
16 interview where that was going to be discussed.

17 Q. Do you remember the date of that appointment?

18 A. No.

19 Q. Okay. Was that appointment canceled?

20 A. Yes.

21 Q. And who canceled that appointment?

22 A. Captain Centanni.

23 Q. Were you advised why Captain Centanni canceled
24 that appointment?

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1 A. Yes.

2 Q. Okay. And what were you told was the reason it
3 was canceled?

4 A. That the Attorney General's Office requested the
5 Troy Police Department stop the internal affairs
6 process.

7 Q. Okay. You testified before a grand jury in
8 connection with this shooting; correct?

9 A. Yes.

10 Q. Was that appointment supposed to take place
11 before or after the grand jury?

12 A. After.

13 Q. Approximately how long after the grand jury did
14 -- withdrawn.

15 Do you know the end result of the grand
16 jury?

17 A. Yes.

18 Q. Okay. And they returned a no true bill; correct?

19 A. Yes.

20 Q. You've heard the term before, "no true bill"?

21 A. Yes.

22 Q. Okay. How long after the grand jury returned
23 this no true bill was that appointment scheduled
24 for with Captain Centanni?

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1 A. Within one to two weeks.

2 Q. Who is the one who advised you that the
3 appointment had been canceled?

4 A. Captain Centanni.

5 Q. Was that by email or verbal or something else?

6 A. By phone.

7 Q. Do you remember anything about the phone call?

8 A. Just that the context was he advised me the
9 Attorney General's Office requested Troy Police
10 stop the internal affairs process, and I'll be
11 notified when it will take place again.

12 Q. Have you discussed the events that took place in
13 the shooting from April 17th, 2016, with any
14 member of the Attorney General's Office?

15 A. No.

16 Q. Have you been requested to come in and speak with
17 anyone from Attorney General's Office about the
18 events that took place on April 17th, 2016?

19 A. No.

20 Q. Have you, yourself, approached the Attorney
21 General's Office and asked them for permission to
22 come in and discuss with them the events that
23 took place on April 17th, 2016?

24 A. No.

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1 Q. What do you recall about -- withdrawn.

2 Do you recall speaking with Sergeant Bornt
3 about the events that took place in the shooting
4 of April 17th, 2016?

5 A. Yes.

6 Q. Approximately how many times did you discuss
7 those events with Sergeant Bornt?

8 A. Once.

9 Q. And what date, if you recall, did that take
10 place?

11 A. I don't recall the date. It was Thursday
12 following that incident.

13 Q. Do you recall what day of the week was the
14 incident, what day was April 17th, 2016?

15 A. Sunday.

16 Q. Okay. So then Thursday of that same week was
17 when you were speaking with him?

18 A. Yes.

19 Q. So approximately -- I shouldn't say even,
20 approximately, but it's four days later, right,
21 Monday, Tuesday, Wednesday, Thursday is four days
22 later?

23 A. Yes.

24 Q. Okay. What do you recall about the conversation

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1 with Sergeant Bornt?

2 A. They -- I told them what had occurred, and they
3 asked some clarified questions.

4 Q. When you say "they," was Sergeant White present
5 during this conversation?

6 A. Yes.

7 Q. Did you have an independent conversation with
8 Sergeant White about the shooting from
9 April 17th, 2016, separate and apart from this
10 meeting with Sergeant Bornt?

11 A. No.

12 Q. Now, there was a video that was taken by Phil
13 Gross from that evening. Have you heard this
14 before?

15 A. Yes.

16 Q. Have you ever seen that video?

17 A. Yes.

18 Q. Did you watch that video with Sergeants Bornt and
19 White?

20 A. No.

21 Q. At what point did you first watch that video?

22 A. With my counsel here.

23 Q. Any conversation you had with counsel about that
24 video I'm not inquiring to.

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1 Did you review anything other than that
2 video with counsel that was in video form?

3 A. No.

4 Q. Did you listen to any audio with counsel other
5 than the audio from that video?

6 MR. ASPLAND: Do you understand his question?

7 A. Yes. We listened to the very first part of the
8 radio transmissions.

9 Q. Okay. Again, I'm not asking about any
10 conversations you had with counsel. But at any
11 point other than reviewing with counsel, did you
12 ever review that video with anyone else?

13 A. No.

14 Q. How many times have you watched that video?

15 A. Once.

16 Q. Do you recall approximately how long ago it was
17 you watched it?

18 A. Last night.

19 Q. Last?

20 A. Last night.

21 Q. Last night. Okay. And that was the first time
22 you viewed that video?

23 A. Yes.

24 Q. Okay. Okay. We mentioned Captain Centanni,

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1 Sergeant Bornt, and Sergeant White.

2 Was there anyone else who you recall
3 interviewing you on behalf of the Troy Police
4 Department in connection with the events that
5 took place on April 17th, 2016?

6 A. No.

7 Q. Did you ever speak with anyone from the
8 Rensselaer County District Attorney's Office
9 about the officer-involved shooting that you were
10 involved in on April 17th, 2016?

11 A. Yes.

12 Q. Who did you speak with from the Troy District
13 Attorney's Office?

14 A. The district attorney himself, Joel Abelove.

15 Q. Was that the first time that you had ever spoken
16 with Joel Abelove?

17 A. No.

18 Q. Had you testified at trials that Joel Abelove had
19 conducted prior to April 17th, 2016?

20 A. Not that I recall.

21 Q. But you have testified at trials just with a
22 different line DA?

23 A. Yes.

24 Q. Had you met Joel Abelove before?

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1 A. Yes.

2 Q. Did you know Joel Abelove in social context
3 outside of your role as police officer?

4 A. No.

5 Q. How many times did you discuss the incident from
6 April 17th, 2016, with Joel Abelove?

7 A. Twice.

8 Q. When was the first time that you discussed it
9 with him, if you can remember the day of the
10 week?

11 A. It was that Thursday, which I know it to be the
12 21st; it was that afternoon.

13 Q. And where did that conversation take place?

14 A. The conference room of the Rensselaer County
15 District Attorney's Office.

16 Q. Was anyone present during that conversation?

17 A. Yes.

18 Q. Other than obviously yourself and Joel Abelove,
19 who else was present?

20 A. My attorney Andrew Safranko.

21 Q. Who hired Andrew Safranko to represent you?

22 A. I did.

23 Q. Was that through the police union, or that was
24 privately through yourself?

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1 A. We've only had one other officer-involved
2 shooting, which took place August 2015, and in
3 that case the city paid for the officers to have
4 attorneys. Same case with me, I called Andrew
5 Safranko, and he bills the city.

6 Q. Who's the officer involved in that shooting?

7 A. There's two officers; there was Chad Klein and
8 Officer Joshua Komitale.

9 Q. Prior to April 17th, 2016, had you ever fired
10 your service weapon while on the job?

11 A. Yes.

12 Q. Had you ever fired your service weapon at --
13 withdrawn.

14 Prior to April 17th, 2016, had you ever
15 fired your service weapon where the bullets from
16 that weapon struck a person?

17 A. No.

18 Q. So this was the first time that you had actually
19 fired a service weapon where the bullet struck a
20 person?

21 A. Yes.

22 Q. And the previous times that you had fired your
23 service weapon that was on the job, are you
24 including training; is that what you're referring

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1 to?

2 A. No. Shooting sick or injured animals.

3 Q. And that would be in the course of your job as a
4 patrolman in order to protect the public?

5 A. Yes. Or to put them out of their misery if
6 they're injured.

7 Q. Have you ever fired your service weapon as a
8 warning shot prior to April 17th, 2016?

9 A. No.

10 Q. Did you ever speak with the FBI about the events
11 that took place on April 17th, 2016?

12 A. No.

13 Q. Did you ever speak with anyone from the mayor's
14 office about the events that took place on April
15 17th, 2016?

16 A. No.

17 Q. Did you ever speak to the mayor himself about the
18 events that took place on April 17th, 2016?

19 A. I apologize. Would you consider corporation
20 counsel as someone from the mayor's office?

21 Q. It's a fair question. But no, I'm specifically
22 asking about someone who's in the mayor's office.
23 The corporation counsel, as far as I know,
24 although they answer to the mayor, are not part

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1 of his office; am I incorrect with that?

2 A. I would agree with you. I just wanted to clarify
3 that. No, I have not talked to the mayor in
4 regards to the incident.

5 Q. Okay. So you had mentioned a conversation with
6 Joel Abelove and Andrew Safranko that took place
7 that Thursday you had that individual
8 conversation.

9 When was the next time that you spoke with
10 Joel Abelove about the events?

11 A. In the grand jury.

12 Q. Okay. I'm going to ask you to leave the room for
13 a minute so I can speak with counsel.

14 (An off-the-record discussion was held.)

15 BY MR. TORCZYNER:

16 Q. I'm going to ask you a series of questions
17 relating to the conversations that you had or the
18 conversations, singular, that you had with
19 Joel Abelove where Andrew Safranko was present.
20 I've spoken with your counsel outside of your
21 presence. There are certain questions for which
22 he's going to object. At that point, do not
23 answer the questions. You will be instructed by
24 counsel, I anticipate, not to answer. We will be

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1 marking those questions for a ruling which, for
2 your purposes, doesn't really mean anything
3 today. Down the road you may be asked to revisit
4 them or not, depending on how the court rules on
5 that.

6 When was this meeting with Joel Abelove and
7 Andrew Safranko?

8 A. The afternoon of Thursday, April 21st, 2016.

9 Q. Who asked you to come to this meeting?

10 A. The -- somebody from the district attorney's
11 office reached out to my attorney, and my
12 attorney said we are going to meet there.

13 Q. Okay. Now, I'm not going to ask you questions
14 about anything your attorney said to you.

15 Did you have any contact with the district
16 attorney's office to set up that meeting separate
17 and apart from Mr. Safranko telling you that
18 there was going to be a meeting?

19 A. No.

20 Q. Was there anyone from the direct attorney's
21 office present at that meeting other than the
22 district attorney himself?

23 A. I can't recall.

24 Q. How long did that meeting take place?

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1 A. I don't remember.

2 Q. More than 15 minutes?

3 A. Do you want me to guess?

4 Q. No. But based on your recollection you might be
5 able to know whether it was a quick meeting or a
6 longer meeting.

7 A. One to two hours.

8 Q. Okay. So definitely more than 15 minutes?

9 A. Yes.

10 Q. During that meeting, did the district attorney
11 ask you to -- tell you the events as they took
12 place on April 17th, 2016?

13 MR. ASPLAND: What was the question again?

14 (The requested testimony was read back.)

15 MR. ASPLAND: You can answer.

16 A. Yes.

17 Q. Did you in fact tell the district attorney your
18 story of what took place on April 17th, 2016?

19 MR. ASPLAND: I'm going to object to the form
20 of the question.

21 MR. TORCZYNER: Is he allowed to answer?

22 MR. ASPLAND: He can answer that.

23 Q. Do you understand the question as I've asked it?

24 A. Yes.

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1 Q. Can you answer the question?

2 A. Yes.

3 Q. And?

4 A. Yes.

5 Q. Did you tell the district attorney about the
6 events of April 17th, 2016, specifically, the
7 shooting of Edson Thevenin in a narrative, or was
8 it a question/answer?

9 A. Narrative.

10 Q. Were you interrupted at any point during your
11 narrative to Mr. Abelove by Mr. Abelove?

12 A. I don't recall.

13 Q. Did Joel Abelove ask you any questions about the
14 events that took place on April 17th, 2016?

15 A. Yes.

16 Q. Did Joel Abelove suggest to you answers to be
17 given to the grand jury if you were questioned by
18 the grand jury about the events of April 17th,
19 2016?

20 A. No.

21 Q. Did Joel Abelove in any way tell you -- or
22 withdrawn.

23 Did Joel Abelove in any way comment to you
24 about your narrative of the events that took

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1 place on April 17th, 2016?

2 A. No.

3 Q. Did Joel Abelove give you any advice as far as
4 how to testify before the grand jury on
5 April 17th, 2016 -- withdrawn.

6 Did Joel Abelove give you any advice as to
7 how to testify about the events of April 17th,
8 2016, before the grand jury?

9 A. No.

10 Q. After you finished your narrative before Joel
11 Abelove of the events that took place, did
12 Mr. Abelove ask you to repeat the narrative
13 again?

14 A. I don't remember.

15 Q. Okay. Did Joel Abelove provide you information
16 about any other witness's statements about the
17 events that took place on April 17th, 2016?

18 A. No.

19 Q. Did you ask Joel Abelove any questions during
20 this meeting that took place on that Thursday
21 after the shooting?

22 A. Not that I remember.

23 Q. Okay. Are you familiar with the concept of being
24 given immunity to testify?

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1 A. Yes.

2 Q. Did Joel Abelove discuss with you during this
3 meeting whether or not you would be given
4 immunity for purposes of testifying?

5 A. Yes.

6 Q. And what did he discuss with you?

7 A. He told my attorney and I that he was unsure if
8 he was going to make me waive immunity when I
9 went into the grand jury.

10 Q. Okay. Did you eventually waive immunity in order
11 to testify before the grand jury?

12 A. No.

13 Q. Okay. Now, I'm not asking about conversations
14 that you had with Mr. Safranko. I just want to
15 be clear to the extent Mr. Safranko had any
16 conversations with you about the testimony,
17 immunity, anything of that nature. If your
18 answer to my question is going to be something
19 that Mr. Safranko told you, you need to let your
20 counsel know because I'm not looking to get into
21 that.

22 Do you understand that instruction?

23 A. Yes.

24 Q. Did anyone other than Joel Abelove discuss with

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1 you the meaning of having immunity for testifying
2 before the grand jury?

3 A. Just Mr. Safranko.

4 Q. Okay. Were you asked to sign anything while
5 present in Joel Abelove's office on that Thursday
6 after the shooting?

7 A. No.

8 Q. Were you given anything by Joel Abelove or his
9 office during this meeting on Thursday after the
10 shooting?

11 A. No.

12 Q. This meeting that you had with Joel Abelove and
13 Andrew Safranko, that was before you testified
14 before the grand jury; correct?

15 A. Yes.

16 Q. You had mentioned a video that you had watched
17 with counsel last night. Do you remember talking
18 about that?

19 A. Yes.

20 Q. Did Joel Abelove discuss with you the fact that
21 that video existed?

22 A. I don't remember.

23 Q. Did Joel Abelove tell you his understanding of
24 what events took place on April 17th, 2016?

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1 A. No.

2 MR. TORCZYNER: Let's go off for a second.

3 (An off-the-record discussion was held.)

4 BY MR. TORCZYNER:

5 Q. All right. One last question I'm going to ask
6 you, then we'll move on from this topic.

7 Did Joel Abelove promise you anything in
8 exchange for your testimony?

9 A. No.

10 Q. Other than Joel Abelove and Andrew Safranko, did
11 you discuss with anyone prior to testifying
12 before the grand jury that you would in fact be
13 testifying before the grand jury?

14 A. I believe just my wife.

15 Q. Did you in fact testify at the grand jury?

16 A. Yes.

17 Q. Do you know what day that was?

18 A. The following day. That would be Friday,
19 April 22nd.

20 Q. Were you questioned by Joel Abelove during the
21 grand jury proceeding?

22 A. Yes.

23 Q. Were you questioned by any members of the grand
24 jury?

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1 A. Not that I remember.

2 Q. Did anyone other than Joel Abelove present this
3 case to the grand jury?

4 A. No.

5 Q. Approximately how long were you testifying before
6 the grand jury, time-wise, if you know?

7 A. 30 to 45 minutes.

8 Q. Okay. After you finished your testimony were you
9 requested to come back and add additional
10 testimony?

11 A. No.

12 Q. Who was the chief of the Troy Police Department
13 in April of 2016?

14 A. John Tedesco.

15 Q. Is John Tedesco still the chief?

16 A. Yes.

17 Q. Were there assistants or deputy chiefs who worked
18 under Chief Tedesco?

19 A. Yes.

20 Q. And who were those assistant or deputy chiefs in
21 April of 2016?

22 A. Deputy Chief Richard McAvoy and Assistant Chief
23 George VanBramer.

24 Q. Within the chain of command was one above the

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1 other?

2 A. Yes.

3 Q. And who was above the other?

4 A. Deputy chief is higher than assistant chief.

5 Q. Deputy Chief McAvoy was superior to Assistant
6 Chief VanBramer?

7 A. Yes.

8 Q. Did you ever report directly to Chief Tedesco or
9 Deputy Chief McAvoy or Assistant Chief VanBramer?

10 A. Are you asking ever have I?

11 Q. Uh-huh.

12 A. When I was the record sergeant I reported
13 directly to, at the time, Assistant Chief John
14 Tedesco.

15 Q. What year was that?

16 A. The end of 2009 into the beginning of 2010.

17 Q. What's a record sergeant?

18 A. You oversee the records unit where all reports
19 are kept, and I oversaw a civilian staff of
20 three.

21 Q. At that time what was your official title; were
22 you the patrol sergeant also, or did you have
23 some other sergeant title?

24 A. I still fell into the patrol division, so

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1 technically I was a patrol sergeant. But
2 customarily I was referred to as the record
3 sergeant because there is only one record
4 sergeant.

5 Q. In and around April of 2016 how many police
6 stations were there for the Troy Police
7 Department?

8 A. We at that time owned three. We only used one.

9 Q. And where was the one station that was actually
10 utilized located?

11 A. The central station at 55 State Street, Troy, New
12 York.

13 Q. And that was the location where you did roll call
14 for the first platoon on April 17th, 2016?

15 A. Technically the roll call occurred on April 16th,
16 but, yes.

17 Q. Okay. If I were to say the roll call for the
18 first platoon, you would understand the shift
19 that started 11:30 or midnight, with midnight
20 being the 17th, and 11:30 being the 16th?

21 A. Yes.

22 Q. Who decided which platoon a desk sergeant --
23 withdrawn.

24 Who decided which platoon a patrol sergeant

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1 was assigned to?

2 A. One more time, please.

3 Q. You were platoon -- you were the patrol sergeant
4 for the first platoon; correct?

5 A. I was one of three patrol sergeants for the first
6 platoon.

7 Q. During the month of April 2016 were you a patrol
8 sergeant for any other platoon other than the
9 first platoon?

10 A. No.

11 Q. Okay. Who decided that you would be in the first
12 platoon?

13 A. That's based on the bid. I chose to work the
14 first platoon.

15 Q. Now, as part of the first platoon you weren't
16 working midnights every night of the week;
17 correct?

18 A. I worked five nights of the week.

19 Q. Was there a pattern for nights on and nights off?

20 A. Yes.

21 Q. And what was the pattern, to the best of your
22 recollection?

23 A. The patrol sergeants and patrol officers are on a
24 three-week rotation. One week you have Tuesday,

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1 Wednesday off; the following week you have
2 Monday, Saturday off; the next week Sunday,
3 Thursday off. That way you get every third
4 weekend off.

5 Q. Okay. That shift that you started, which was the
6 first platoon for April 17th, 2016, what time did
7 you actually start that shift?

8 A. 11:30 p.m.

9 Q. Captain Montanino already there at that point?

10 A. Yes.

11 Q. Was that the first day of your shift, or had you
12 worked also the Friday night into Saturday
13 morning, first platoon as well?

14 A. I do not remember. I would have been scheduled,
15 but I don't know if I took it off.

16 Q. In and around April of 2016 did you have any
17 other job separate and apart from being a
18 sergeant with the Troy Police Department?

19 A. Yes.

20 Q. What other jobs did you have?

21 A. I am a -- then and now, a critical care
22 technician for the town of North Greenbush
23 Ambulance.

24 Q. And what were your hours as part of critical care

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1 technician for North Greenbush?

2 A. It varied. I worked around my days off at the
3 police department. But they were generally 6 at
4 night to 6 in the morning on my days off, one of
5 my days off.

6 Q. Well, you couldn't be from 6 at night if you were
7 on duty at 11:30 at night?

8 A. Exactly.

9 Q. So you theoretically could have a shift from
10 11:30 to 6:30 in the morning, and then later that
11 evening start a 6 p.m. shift for North Greenbush?

12 A. If I was off the following night, yes.

13 Q. Do you know whether you were on for North
14 Greenbush on April 16th, 2016?

15 A. I did work -- I do recall that I did work the
16 police department Friday into Saturday, now, that
17 you say this because I went from the police
18 department at 7:30 in the morning, and I did work
19 a partial shift at the ambulance that Saturday
20 until 6 p.m.

21 Q. So you worked from, if I'm understanding
22 correctly, 11:30 to 6:30?

23 A. 11:30 to 7:30.

24 Q. 11:30 to 7:30. Thank you. 11:30 to 7:30, and

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1 then you worked a partial shift for North
2 Greenbush. What were the hours for that partial
3 shift?

4 A. Whenever I got there following the police
5 department until 6 p.m.

6 Q. Do you have any records at home that would show
7 you what your shift was that day?

8 A. No.

9 Q. Would you have the ability to access any records
10 that would show you what your shift was for North
11 Greenbush on April 16th, 2016?

12 A. I could ask the company, but I don't have acces
13 to anything, no. I know it was, I left the
14 police department, went there, that job. My
15 memory's Friday, and I know I worked until 6.

16 Q. But you don't know what time it started?

17 A. It started whenever I walked in the door. The
18 shift -- whoever worked the shift covered until I
19 got there. So it was just whenever I walked in
20 the door is when the shift started.

21 Q. And when did that shift end with North Greenbush?

22 A. 6 p.m.

23 Q. Okay. Do you recall having a meal in between
24 your completion of the North Greenbush Ambulance

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1 or Critical Care and starting the 11:30 shift
2 with the police department for that first
3 platoon?

4 A. I had dinner. I always do. I don't recall what
5 it was.

6 Q. If I were to refer to North Greenbush Critical
7 Care as "the ambulance," would you know what I
8 was talking about?

9 A. Yes.

10 Q. Is it in fact an assignment to an ambulance?

11 A. Yes.

12 Q. Okay. Do you recall any of the calls that you
13 went to for North Greenbush Ambulance that
14 April 16th, 2016?

15 A. I don't know if I did any.

16 Q. When you were not out on a call for North
17 Greenbush Ambulance, were you in a firehouse or
18 some other unit like that?

19 A. It's an ambulance garage. I slept all day. We
20 have bunk rooms. We have a kitchen and a living
21 room.

22 Q. Is there anything that would record, to your
23 knowledge, whether you went out on a call for
24 North Greenbush during that time period?

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1 A. Again, we would have to contact the company.

2 MR. TORCZYNER: Off the record for a minute.

3 (An off-the-record discussion was held.)

4 Q. Let's go back to the first platoon daily sheet,
5 please, that you have in front of you.

6 A. Uh-huh.

7 Q. Now, this indicates that you were assigned Car
8 112; is that correct?

9 A. That is my radio call sign. My car assignment
10 was Car 30.

11 Q. Car 30. Had you ever used Car 30 before?

12 A. Yes.

13 Q. Did Car 30 have any MDT?

14 A. Yes.

15 Q. Did Car 30 have a videocamera?

16 A. No.

17 Q. To your knowledge, in April of 2016 did any Troy
18 police vehicles have a videocamera?

19 A. No.

20 Q. As sit you here today, are you aware whether any
21 Troy police vehicle have videocams?

22 A. I am not aware.

23 Q. Are you familiar that some police department use
24 body cams?

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1 A. Yes.

2 Q. To you knowledge, back in April of 2016 were any
3 Troy police officers required to use body cams?

4 A. No.

5 Q. To you knowledge, in April of 2016 did any police
6 officers use body cams?

7 A. No.

8 Q. You were issued a service weapon at that point?

9 A. What do mean by "at that point"?

10 Q. Okay. On April 17th, 2016, you had been issued a
11 service weapon?

12 A. Yes.

13 Q. And what was that?

14 A. It was a Kimber 1911 45-caliber pistol.

15 Q. Was that something you purchased or something
16 Troy purchased for you or something else?

17 A. The city purchased it for me.

18 Q. Okay. Did you select it yourself, or it was just
19 issued to you?

20 A. It was issued to me.

21 Q. And for how long prior to April 17th, 2016, had
22 you had that Kimber in your possession?

23 A. I believe it was given to me in the beginning of
24 2009.

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1 Q. Had you ever fired that weapon while on duty
2 prior to April 17th, 2016?

3 A. No.

4 Q. Had you ever used that weapon for certifications
5 prior to April 17th, 2016?

6 A. Yes.

7 Q. Had you ever gone to a gun range for target
8 practice as a private citizen?

9 A. Yes.

10 Q. Did you ever use that Kimber on a gun range as a
11 private citizen?

12 A. Yes. I went to our department range on my own
13 time.

14 Q. Okay. What kind of ammunition was in that weapon
15 on April 17th, 2016?

16 A. The issued duty ammo, which I believe is a
17 Winchester Ranger .45 +P.

18 Q. When was the last time prior to the morning of
19 April 17th, 2016? And when I said "morning," I
20 mean, when you started the shift even though it
21 was 11:30 at night. When was the last time that
22 you had test fired the Kinter?

23 A. I don't remember.

24 Q. When you traditionally finished a shift did you

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1 remove all of the bullets from the gun when you
2 finished that shift?

3 A. No.

4 Q. Do you know when the bullets were loaded into
5 that Kinter?

6 A. It's Kimber.

7 Q. Kimber. Thank you.

8 A. No.

9 Q. Traditionally what did you do with Kimber after
10 you finished a shift?

11 A. I left it in the holster on my belt and hung the
12 belt up in my locker.

13 Q. At 55 State Street?

14 A. Yes.

15 Q. You had previously mentioned using a service
16 weapons to shoot animals. Do you remember giving
17 that answer?

18 A. Yes.

19 Q. Do you have a present recollection of using the
20 Kimber to shoot animals?

21 A. I know I shot a sick raccoon once with a pistol.
22 I don't recall if it was that gun or a previous
23 gun.

24 Q. Do you hunt privately?

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1 A. No.

2 Q. Do you own a private firearm?

3 A. Yes.

4 Q. Obviously you're licensed to do so; correct?

5 A. Yes.

6 Q. Okay. On the duty roster there's an SG on this
7 daily sheet.

8 A. Yes.

9 Q. That's for a shotgun; is that correct?

10 A. Yes.

11 Q. So where it indicates that Galligan, and there's
12 a checkmark by shotgun, that means that he was
13 issued a shotgun by the Troy Police Department
14 for that date?

15 A. Yes.

16 Q. It also indicates "TAS," which is Taser?

17 A. Yes.

18 Q. Were you ever certified in the use of a Taser?

19 A. Yes.

20 Q. But that evening you were not carrying one;
21 correct?

22 A. Correct.

23 Q. Other than the Kimber, what other equipment were
24 you carrying on your belt or holster?

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1 A. I had two spare magazines. I had a collapsible
2 baton, a glove pouch, one double-set of handcuff
3 case with two handcuffs in it, my canister of OC
4 spray, my radio. I believe that's it.

5 Q. Okay. Let's get into the OC spray for a minute.
6 The OC spray was something you purchased
7 privately or something that was given to you by
8 the Troy Police Department or something else?

9 A. It was issued.

10 Q. Do you know how long prior to April 17th, 2016,
11 you were given that particular canister of OC?

12 A. No.

13 Q. As part of your service with the Troy Police
14 Department were you required to turn in OC spray
15 canisters in exchange for new ones on a periodic
16 basis?

17 A. Yes.

18 Q. And what would -- is there a document that would
19 record when you last turned in or exchanged your
20 OC spray prior to April 17th, 2016?

21 A. I don't know.

22 Q. When you generally take out a Taser and bring it
23 back in, you have to sign into a book; correct?

24 A. No, we have a biometric system.

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1 Q. Okay. So it would record when you took out or
2 returned the Taser?

3 A. Yes.

4 Q. Handprint?

5 A. Fingerprint.

6 Q. Fingerprint. When you turned in the --
7 withdrawn.

8 When you would turn in a OC spray and get a
9 new canister, did you similarly go through the
10 biometric system in order to do that?

11 A. No.

12 Q. Was the OC spray issued to you by a technical
13 sergeant or duty officer, or was it just
14 something that you took off the shelf?

15 A. It was issued by the person.

16 Q. Okay. So although you don't remember the last
17 time that you turned in your OC spray and got a
18 new one, when you got that OC spray it was given
19 to you by a person in the Troy Police Department;
20 correct?

21 A. Yes.

22 Q. Do you know who that person was?

23 A. I believe it was Sergeant McAvoy.

24 Q. Does Sergeant McAvoy have a specialized title

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1 like record sergeant or patrol sergeant or desk
2 sergeant?

3 A. He is either a desk sergeant or patrol sergeant.
4 Handling of OC is just an additional duty that he
5 took on.

6 Q. Do you know what happened to the OC that you used
7 on April 17th, 2016?

8 A. No.

9 Q. Were you asked to turn it in somewhere?

10 A. I turned in my entire duty belt. I do not know
11 if it was on my duty belt when that happened.

12 Q. Okay. If it was not on your duty belt, where
13 would it have been?

14 A. Either in Mr. Thevenin's vehicle or in mine,
15 would be my guess.

16 Q. Or it could have been on the roadway, too?

17 A. That is possible.

18 Q. Do you know whether the OC sprays have expiration
19 dates on them?

20 A. They do.

21 Q. Would you regularly check that date?

22 A. Not regularly.

23 Q. As we sit here today, do you know whether the OC
24 spray that you had on your belt when you started

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1 your shift with the first platoon on April 16th
2 going into April 17th, 2016, whether that OC was
3 expired or not?

4 A. I don't remember.

5 Q. What training were you given in the use of OC
6 spray?

7 A. I was trained in the police academy. I don't
8 remember how many hours it was. It involved
9 instruction, practice, and exposure.

10 Q. Exposure so that you would know what it felt
11 like?

12 A. Yes.

13 Q. As part of your Taser training, did they also do
14 that?

15 A. It wasn't required, but I did.

16 (An off-the-record discussion was held.)

17 BY MR. TORCZYNER:

18 Q. Of the vehicle, which was Vehicle 30, did you
19 have any weapons other than what was on your belt
20 or holster?

21 A. Yes.

22 Q. What else did you have in your vehicle?

23 A. There is a rifle mounted in the car.

24 Q. Okay. I don't see an indication about the rifle

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1 in the daily sheet. Is there a reason why it's
2 not indicated there?

3 A. Because the sergeant's vehicles always have
4 rifles in them. The other vehicles are taken in
5 and out of on a daily basis.

6 Q. So whoever was driving Car 30 on any given date
7 and time there would be a rifle available, should
8 they need it?

9 A. Yes.

10 Q. So have you training with the ambulance, you
11 called it "critical care"?

12 A. Yes.

13 Q. Was that specialized medical training that you
14 did separate and apart from your employment at
15 the Troy Police Department?

16 A. Yes.

17 Q. What level are you of EMS or EMT?

18 A. Critical care technicians are interchangeable with
19 paramedics.

20 Q. So you have the ability to dispense medication?

21 A. Yes.

22 Q. And obviously you're trained in the use of
23 defibrillators; correct?

24 A. Yes.

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1 Q. Any other medical training that you're given as
2 part of being with the -- withdrawn.

3 Is there any other training that you had to
4 become a critical care technician?

5 A. I'm trained to do intubations, manual
6 intubations, EKG monitoring and interpretation,
7 IV access, IO access, which stands for
8 intraosseous, as well as IV medications,
9 intramuscular medications, oral medications.

10 Q. And when you -- when did you first begin working
11 for the North Greenbush Ambulance Corp. in this
12 capacity?

13 A. 2013. The beginning of 2013.

14 Q. And you had all of the certifications and
15 trainings that we've just discussed prior to
16 April of 2013?

17 A. Yes.

18 Q. Okay. Did you have any other officers with you
19 in the car when you started patrol on the first
20 platoon -- for the first platoon for the April
21 17th, 2016, date?

22 A. No.

23 Q. Did you have a particular sector or zone that you
24 were assigned to on that date?

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1 A. No.

2 Q. Did you keep a notebook for that night?

3 A. I always carry a notebook.

4 Q. Okay. Have you seen the notebook since that
5 night?

6 A. No.

7 Q. Do you recall recording in that notebook the
8 events that took place with the shooting with
9 Edson Thevenin?

10 A. No.

11 Q. No, you don't recall, or no, you did not?

12 A. I don't recall taking any notes. I don't see why
13 I would have.

14 Q. Did you take any notes in that notebook prior to
15 first interacting with Edson Thevenin on April
16 17th, 2016?

17 A. I don't remember.

18 Q. Okay. The individuals that had zone assignments,
19 were those for particular sectors of the city?

20 A. Yes.

21 Q. Were you supposed to patrol a particular sector
22 of the city as your role as patrol sergeant?

23 A. No.

24 Q. Now, commanding officer, Captain Montanino, he

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1 was also out on patrol that night; correct?

2 A. I know he was working. I didn't know if he was
3 out of the building.

4 Q. When did you first become aware that he was out
5 of the building?

6 A. When he backed me up during the pursuit.

7 Q. Okay. So prior to your pursuit of Edson Thevenin
8 you had no idea that Sergeant Montanino was out
9 of the building?

10 A. I don't recall seeing him, and I don't recall
11 hearing him on the radio, if he did go on the
12 radio.

13 Q. Do you recall making any arrests prior to
14 pursuing Edson Thevenin that evening?

15 A. Yes.

16 Q. What do you recall about those arrests, if
17 anything?

18 A. The Zone 1 officers saw a person who they knew to
19 have a warrant, they tried to stop out with him,
20 and he ran. I drove in their general direction.
21 I saw the individual, and he gave up, and I
22 handcuffed him.

23 Q. Do you know where that took place generally in
24 the neighborhood?

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1 A. South Troy. I was on 3rd Street in the area of
2 Liberty and Division.

3 Q. How long before your first interaction with Edson
4 Thevenin was that arrest?

5 A. I don't recall.

6 Q. Do you recall taking a meal break during that
7 first platoon?

8 A. No.

9 Q. No, you don't recall, or no, you did not?

10 A. I typically do not take a meal break.

11 Q. Now, depending on the police department that
12 you're with, there's a requirement to take a meal
13 break, or there's an option to take a meal break.
14 To your recollection, the individual patrol
15 -- patrol officers, were they required to take
16 meal breaks?

17 A. No.

18 Q. And the patrol sergeants, were they required to
19 take meal breaks?

20 A. No.

21 Q. Did you typically take meal breaks while you were
22 on the first platoon?

23 A. No.

24 Q. When did you first meet Sergeant Montanino --

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1 withdrawn.

2 Captain Montanino?

3 A. When I finished the academy and my additional
4 radar and breathalyzer training, and I was
5 assigned to him for field training.

6 Q. Was he your primary field training officer?

7 A. Yes.

8 Q. Did you ride along with him in the car?

9 A. Yes.

10 Q. Did you drive, or did he drive?

11 A. We would switch.

12 Q. This wasn't something where the junior officer
13 had to drive?

14 A. No.

15 Q. For how long did you ride along with Captain
16 Montanino?

17 A. A total of nine weeks.

18 Q. Do you know whether he's married?

19 A. Yes.

20 Q. Did you and your wife ever socialize with
21 Captain Montanino and his wife?

22 A. No. We've seen each other at functions, but we
23 don't go out together, no.

24 Q. When was the first time you met Edson Thevenin?

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A. April 17th, 2016.

Q. And where did you first see Edson Thevenin?

A. To say definitively I first saw him was when I pulled him over on 6th Avenue.

Q. When you say "definitively," that's because theoretically you might have seen him prior, you just didn't realize you had seen him?

A. No. I saw his vehicle driving previous -- earlier before that stop. I cannot say if he was driving it or not.

Q. When did you first observe that vehicle that you now know was owned by Edson Thevenin?

MR. ASPLAND: Objection to the form.

Q. Okay. Do you know if the vehicle was owned by Edson Thevenin?

A. It was registered to a woman.

Q. Okay. Was the woman Edson Thevenin's wife?

A. I don't remember.

Q. Was it registered to Cinthia Thevenin?

A. I don't remember. I just remember that it was registered to a female.

MR. TORCZYNER: Let's mark this as 2, please.

(Plaintiffs' French Exhibit 2 was marked for identification.)

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1 Q. I'm going to show you a document that's been
2 marked French 2. Just take a brief look at it.
3 Let me know if you've ever seen this before. If
4 you have not seen it, I'm not going to ask you to
5 read it. I just want to know whether you've seen
6 this before.

7 A. I don't believe I've seen this before.

8 Q. Then let's not put this on the stack. Thank you.
9 How did you become aware that the vehicle
10 Edson Thevenin was driving was registered to a
11 female?

12 A. I had run the plate when I first saw the vehicle.

13 MR. TORCZYNER: Off the record.

14 (An off-the-record discussion was held.)

15 BY MR. TORCZYNER:

16 Q. When's the first time that you observed the
17 vehicle that you now know was driven by
18 Edson Thevenin?

19 A. A little while before that traffic stop occurred.
20 I can't say how many minutes it was before.

21 Q. Okay. What was the make and model of that car;
22 do you know?

23 A. A Honda Civic, I believe.

24 Q. So if I refer to it as "the Honda," you'll know

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1 what I'm speaking of; correct?

2 A. Yes.

3 Q. Where did you first observe the Honda?

4 A. Turning westbound onto Congress Street from 6th
5 Avenue.

6 Q. Was it the only vehicle that was making that
7 turn?

8 A. I believe so.

9 Q. What specifically drew your attention to that
10 vehicle?

11 A. It made a very wide turn when it made the turn.
12 6th Avenue is a one-way in each direction turning
13 onto Congress Street -- 6th Avenue is two-way,
14 one way in each direction. Congress Street is a
15 one-way westbound two lanes. When the car turned
16 it went across both lanes, then came back into
17 the right lane and drew my attention.

18 Q. Okay. And what did you do after you noticed that
19 it made that wide turn?

20 A. I followed it.

21 Q. Which direction was it traveling?

22 A. Westbound.

23 Q. So it was going westbound on Congress Street.
24 And what happened next after you followed it?

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- 1 A. I turned northbound, which would be a right turn
2 onto 4th Street.
- 3 Q. At the point that you were following it did you
4 make any radio call?
- 5 A. No.
- 6 Q. And after you proceeded north what did you do
7 next?
- 8 A. The vehicle parked on the right side of 4th
9 Street, which is a one-way, one-way road north
10 parking on both sides of the street.
- 11 Q. I'm sorry. I missed the last thing that you
12 said.
- 13 A. It parked on the right side of the road. I
14 indicated that 4th Street is a one-way road with
15 parking on both sides of the street.
- 16 Q. So at the point that it was parked, was it
17 legally parked?
- 18 A. Yes.
- 19 Q. And after it parked, what did you do next?
- 20 A. I drove by and noticed the license plate.
- 21 Q. Okay. Did you record that in any fashion?
- 22 A. I entered it into my MDT.
- 23 Q. Why did you enter it into the MDT?
- 24 A. Just, the car drew my attention, and I thought

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1 I'd run the plate.

2 Q. Okay. Are you given any specific instructions as
3 to when you should or should not run a plate if
4 you're not making traffic stop?

5 A. No, there's nothing unlawful about running plates
6 randomly.

7 Q. I'm not asking whether it's legal or illegal; I'm
8 just asking whether you're given instructions as
9 a standard operating procedure?

10 A. No.

11 Q. So after you ran the plate, what did you do next?

12 A. I drove down the road on 4th Street to the next
13 block, and I pulled over on the side of the road
14 on the left side to review the information coming
15 back in the computer.

16 Q. Okay. And what do you recall from what you saw
17 in the computer?

18 A. That it was a valid registration to a vehicle
19 that match the description of what I saw, and
20 that it was registered to a female out of
21 Watervliet.

22 Q. Water?

23 A. Watervliet.

24 Q. Do you know whether if there's anything that

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1 would record when you ran that MDT, ran that
2 plate in the MDT?

3 A. I don't know.

4 Q. Typically when an inquiry is done on the MDT, is
5 that recorded somewhere?

6 A. I believe it is.

7 MR. TORCZYNER: To the extent it wasn't
8 provided in the discovery and in the number of
9 thousands of pages, it's possible that it's
10 there, but will ask someone to identify
11 specifically if it is there, and I'll follow it
12 up in writing.

13 MR. ASPLAND: Thank you.

14 MR. TORCZYNER: Thank you.

15 DOCUMENT/INFORMATION REQUESTED:

16 Q. Do you know Phil Gross?

17 A. I've met him.

18 Q. Okay. Now, there's more than one Phil Gross,
19 we've learned.

20 A. I did not know that.

21 Q. Did you know that?

22 A. No.

23 Q. Okay. So the night that you were involved with
24 the shooting, or that you were the shooter in the

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- 1 officer-involved shooting with Edson Thevenin,
2 did you meet someone named Phil Gross?
3 A. I never met him that night.
4 Q. Okay. Did you meet Phil Gross subsequent to that
5 evening?
6 A. Not subsequent. He actually worked on my truck
7 years ago.
8 Q. Okay. Is he a mechanic?
9 A. Yes.
10 Q. Are you aware that Phil Gross was the individual
11 who took the video that you viewed with counsel
12 that evening?
13 A. I have been told that.
14 Q. Were you told that prior to yesterday?
15 A. Yes.
16 Q. Did you ever discuss with Phil Gross the events
17 that took place on April 17th, 2016?
18 A. No.
19 Q. Are you familiar, and I may not be pronouncing
20 this correctly, but with a police officer whose
21 last name is Furciniti?
22 A. Furciniti, yes.
23 Q. How do you know that person?
24 A. He is a police officer with the City of Troy

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1 Police Department.

2 Q. Did you ever have any conversations with him
3 about the events that took place on April 17th,
4 2016?

5 A. Not that I recall.

6 Q. Do you know this officer socially?

7 A. No.

8 Q. Do you know whether he's married?

9 A. I know he's married.

10 Q. Do you know his wife?

11 A. Yes.

12 Q. Her first name is Elana?

13 A. Yes.

14 Q. Have you ever met Elana?

15 A. Yes.

16 Q. Have you ever discussed with Elana the events
17 that took place on April 17th, 2016?

18 A. No.

19 Q. While you were sitting with Sergeants VanBrant
20 and White --

21 MR. ASPLAND: Bornt.

22 MR. TORCZYNER: VanBornt?

23 MR. ASPLAND: Just Bornt.

24 MR. TORCZYNER: Just Bornt. Thank you.

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1 Q. When you were sitting with Sergeants Bornt and
2 White, were you aware whether they were recording
3 your words in any form?

4 A. I did not see any recording devices.

5 Q. Okay. Are you aware whether they were typing any
6 notes while they were speaking with you?

7 A. I did not see a computer.

8 Q. Are you aware of whether they were making written
9 notes on any piece of paper of the conversation?

10 A. I don't remember.

11 Q. Okay. Have you ever seen a written summary of
12 your interview with White and Bornt?

13 A. No.

14 (Plaintiffs' French Exhibit 3 was marked for
15 identification.)

16 Q. I'm going to show you a report and ask you to
17 look at the first page of it. It's been marked
18 French 3 for purposes of this deposition. Across
19 the top it says "City of Troy Police Department
20 Response to Resistance Report," and it names
21 Captain Montanino on the top right corner.

22 Do you see that?

23 A. I do.

24 Q. Have you ever seen a Response to Resistance

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1 Report?

2 A. Yes.

3 Q. Have you ever completed a Response to Resistance
4 Report?

5 A. Yes.

6 Q. Is there something in the Troy police manual that
7 requires or instructs an officer to complete a
8 Response to Resistance Report?

9 A. Yes.

10 Q. To your knowledge, what's the requirement that an
11 officer complete a Response to Resistance Report?

12 A. That it shall be completed, unless they're
13 injured in such a way that it's not possible.

14 Q. And what specifically are the instructions for
15 not completing a Response to Resistance Report?

16 A. I don't recall.

17 Q. Okay. Leaving aside the exception to filling it
18 out, what would be a situation that the Troy
19 police manual would require one to complete a
20 Response to Resistance Report?

21 A. Anytime force is used.

22 Q. And that force could even mean the show of force,
23 like showing a service weapon without actually
24 firing; correct?

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1 A. Yes.

2 Q. Now, using loud directive terms would not require
3 a Response to Resistance Report; correct?

4 A. No.

5 Q. Did you complete a Response to Resistance Report
6 for April 17th, 2016?

7 A. No.

8 Q. Were you asked to complete a Response to
9 Resistance Report?

10 A. No.

11 Q. Were you told that you should not complete a
12 Response to Resistance Report?

13 A. No.

14 Q. And normally if an officer uses a service weapon
15 in an officer-involved shooting, they would
16 generally complete a Response to Resistance
17 Report without certain exceptions; correct?

18 A. Correct.

19 Q. Why is it that you did not complete a Response to
20 Resistance Report?

21 MR. ASPLAND: I'm going to direct him not
22 answer the question to the extent that it invades
23 the attorney/client privilege.

24 Q. All right. Then let's make it easy.

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1 Did you discuss with an attorney whether or
2 not to complete the Response to Resistance
3 Report?

4 MR. ASPLAND: Other than me, any attorney at
5 anytime --

6 MR. TORCZYNER: Anytime.

7 MR. ASPLAND: -- is that your question?

8 MR. TORCZYNER: Yes.

9 A. When I do complete it, it will be my attorney Mr.
10 Safranko.

11 Q. Okay. That's for the future?

12 A. Uh-huh.

13 Q. I'm just asking you whether previous to today,
14 whether you discussed with any attorney the --
15 whether or not -- withdrawn.

16 Prior to today, did you discuss with any
17 attorney whether you should or should not fill
18 out the Response to Resistance Report for the
19 events of April 17th, 2016?

20 A. No.

21 Q. Prior to today has any attorney advised you to
22 not fill out a Response to Resistance Report?

23 A. No.

24 Q. You're a member of the union of the Troy Police

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1 Department?

2 A. Yes.

3 Q. Okay. Do you have a union rep?

4 A. We have a PBA present.

5 Q. Okay. Did the PBA president instruct you not to
6 fill out a Response to Resistance Report?

7 A. No.

8 Q. Generally when a Response to Resistance Report is
9 completed is it turned into a higher-ranking
10 officer, and I use that term loosely, within the
11 department?

12 A. It is approved by the road sergeant, and then
13 signed off by the commanding officer, such as the
14 captain if they're available. If the commanding
15 officer's not working that night, it just goes
16 with the sergeant's approval and gets forwarded
17 through.

18 Q. Okay. You were the road sergeant that night;
19 right?

20 A. Yes.

21 Q. So this wouldn't have gone to you, it would have
22 gone theoretically to Captain Montanino?

23 A. Or the desk sergeant can sign it in that case.

24 Q. Did anyone ask you to fill out a Response to

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1 Resistance Report?

2 A. No.

3 Q. Did you ever at any point begin to prepare a
4 Response to Resistance Report for that evening?

5 Do you understand the question I'm asking?

6 MR. ASPLAND: Can we consult? You got a
7 question pending, it's up to you.

8 Q. You're asking whether you can speak to counsel.

9 My question to you is: The question you're going
10 to ask counsel, does that involve something you
11 previously discussed with him?

12 A. Yes.

13 Q. Okay. You guys can talk.

14 (An off-the-record discussion was held.)

15 MR. TORCZYNER: Is there going to be an
16 answer to the question?

17 MR. ASPLAND: Yeah.

18 (The requested testimony was read back.)

19 A. Yes.

20 Q. Okay. Was that prepared manually, or on a
21 computer?

22 A. Computer.

23 Q. Where was that computer located?

24 A. My house.

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1 Q. Had you ever completed a Response to Resistance
2 Report on your home computer before?

3 A. No.

4 Q. Are you familiar with the concept of a VPN; have
5 you ever heard that term before?

6 A. Yes.

7 Q. Does the City of Troy Police Department have VPN
8 access to its computer systems?

9 A. Do you mean for like remote access?

10 Q. Yes.

11 A. I don't know.

12 Q. Okay. How would you complete a Response to
13 Resistance Report on your home computer; is that
14 a form that you have on your home computer?

15 A. I would carry a thumb drive which has all of our
16 forms on it; I can access them anywhere.

17 Q. Where is the Response to Resistance Report that
18 you started; is it still in existence?

19 A. It still exists on my computer.

20 MR. TORCZYNER: I'll make a request for it.

21 Q. Your counsel and I will discuss that subsequently
22 as far as your instructions, and you have -- you
23 can speak to John about where to go with that.

24 DOCUMENT/INFORMATION REQUESTED:

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1 Q. The first page of this report, do you see that?

2 A. Yes.

3 Q. Did you complete that entire first page on the
4 home computer?

5 A. I don't know.

6 Q. Approximately how long after the incident of
7 April 17th, 2016, did you start to prepare the
8 Response to Resistance Report?

9 A. I don't remember.

10 Q. Was it before or after you testified at the grand
11 jury?

12 A. After.

13 Q. Was it more than a week after you testified at
14 the grand jury?

15 A. Yes.

16 Q. Was it within the last month?

17 A. From now?

18 Q. Yeah.

19 A. No.

20 Q. Okay. So at some point after the end of
21 April 2016 and before June 2017?

22 A. Yes.

23 Q. Other than the Response to Resistance Report,
24 have you prepared anything in typewritten form,

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1 computer typewritten form which records the
2 events that took place in your own words on
3 April 17th, 2016?

4 A. Just a Supplemental Report that is required for
5 officers involved in motor vehicle accidents.

6 Q. Where is that Supplemental Report?

7 A. On my computer.

8 Q. Did you complete that, or is that also in
9 process?

10 A. In process.

11 Q. Did you prepare that Supplemental Report in and
12 around the same timeframe that you started this
13 Response to Resistance Report?

14 A. Yes.

15 Q. Is that Supplemental Report completed, or is it
16 in process?

17 A. In process.

18 Q. Is anyone aware that you begun to prepare these
19 two reports?

20 A. Mr. Safranko is.

21 Q. Did Mr. Safranko give you -- I'm going to preface
22 my question with a statement; just please hear my
23 statement. I don't want to know what he told
24 you --

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1 A. Okay.

2 Q. -- but I do want to know. And my question is
3 going to be whether he talked you to about it.
4 Do you understand the difference?

5 A. Yes.

6 Q. Did Mr. Safranko discuss with you your
7 preparation of the Response to Resistance Report
8 and the Supplemental Report that you just
9 mentioned?

10 A. We discussed the Response to Resistance Report.
11 I -- yes, we discussed both.

12 Q. Has Mr. Safranko seen your draft Response to
13 Resistance Report and your draft Supplemental
14 Report?

15 A. Yes.

16 Q. Do you recall when he saw them?

17 A. I emailed them to him. And shortly after I
18 started them, and --

19 Q. Again, I don't want to know anything he responded
20 to you.

21 A. Okay. And we talked shortly thereafter.

22 Q. If you were to go home and look at your emails,
23 would you know the date of that email; do you
24 generally save your sent messages, or do you

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1 delete them?

2 A. I'm pretty sure I save them. I don't make a
3 habit of deleting them, so it's possible.

4 Q. And I'm not instructing what to do or not do with
5 anything. You have two lawyers that can give you
6 legal advice. I'm not one of them. But to the
7 extent that you have not deleted that email, I'm
8 going to ask your counsel to ensure that it does
9 not get deleted.

10 MR. ASPLAND: You're talking about the
11 communication between he and Mr. Safranko?

12 MR. TORCZYNER: That's correct. I'm not
13 asking for production of it; I'm asking for it to
14 be preserved. And I would ask to leave a gap in
15 the transcript.

16 Q. If you're capable of ascertaining the date when
17 that email was sent, if you could fill it in on
18 the gap in the transcript when it's given to you
19 to review.

20 A. Okay.

21 Q. Do you understand those instructions?

22 MR. ASPLAND: I'll take that request under
23 advisement.

24 MR. TORCZYNER: Fair enough.

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1 DOCUMENT/INFORMATION REQUESTED:

2 Q. So other than the draft Response to Resistance
3 Report -- we'll call these drafts because they're
4 not completed -- and the draft Supplemental
5 Report, did you prepare anything else in
6 typewritten form that purports your perceptions
7 of the events that took place on April 17th,
8 2016?

9 A. No.

10 Q. Did you prepare anything in written form,
11 handwritten form that recalls or memorializes the
12 events that took place on April 17th, 2016?

13 A. No.

14 Q. Were you injured that night?

15 A. Yes.

16 Q. Did you have to fill out any paperwork related to
17 that injury?

18 A. It was filled out for me.

19 Q. Who filled out the paperwork?

20 A. Captain Kehm, K-E-H-M.

21 Q. Did you have to sign that paperwork?

22 A. I don't remember.

23 Q. What injury did you sustain that night?

24 A. I sustained soft tissue damage, a bruising of the

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1 tibia bone, and a fracture of the tibial spine.

2 Q. Okay. The soft tissue damage was to what part of
3 the body?

4 A. The entire knee, and my right side of my lower
5 leg.

6 Q. Pardon my asking for clarification, but which
7 knee?

8 A. Left knee.

9 Q. Okay. So you have soft tissue damage to your
10 left knee. And if you can, again, please repeat
11 the other injuries you sustained.

12 A. Bruising to the bone itself of the tibia, left
13 tibia, as well as a fracture of the left tibial
14 spine.

15 Q. Did someone tell you that you had a fractured
16 left tibial spine?

17 A. Yes.

18 Q. Did you ever see the x-rays that show that
19 fracture?

20 A. It was an MRI, and yes.

21 Q. When did you see that MRI?

22 A. It was at least a month after the injury.

23 MR. TORCZYNER: Can we talk outside for a
24 second?

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1 (An off-the-record discussion was held.)

2 BY MR. TORCZYNER:

3 Q. Are you still receiving treatment for any
4 injuries you sustained on April 17th, 2016?

5 A. No.

6 Q. When was the last time that you received
7 treatment for any of the injuries that you
8 sustained on April 17th, 2016?

9 A. Early July 2016.

10 Q. Okay. You had mentioned previously that -- one
11 moment, please. You had mentioned previously
12 that you had been taking Celexa under a doctor's
13 care and pursuant to a prescription.

14 Do you remember giving that answer?

15 A. Yes.

16 Q. Were you taking Celexa on the morning of
17 April 17th, 2016?

18 A. Yes.

19 Q. Had that prescription changed at any point during
20 the 30 days prior to April 17th, 2016, to your
21 recollection?

22 A. No.

23 Q. For what time period have you been taking Celexa?

24 A. Seven years.

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1 Q. So since?

2 A. 2010.

3 Q. Did you file any paperwork with the City of Troy
4 Police Department where you advised them that
5 you're taking that medication?

6 A. No.

7 Q. Now, I know we're going back 18 months.

8 Do you recall whether you had taken that
9 Celexa prior starting your shift on the first
10 platoon for April 17th, 2016?

11 A. I don't remember.

12 Q. Do you recall being under the care of a physician
13 -- withdrawn. I'll ask the question better.

14 Do you recall seeing a doctor at any point
15 during the week prior to April 17th, 2016?

16 A. No.

17 Q. No, you didn't, or no, you don't recall it?

18 A. I don't recall, but I don't remember seeing one.

19 Q. So you had conversation, at least one
20 conversation, with Sergeant Bornt and Sergeant
21 White about the events that took place on
22 April 17th, 2016; correct?

23 A. Yes.

24 Q. Do you know whether they came to a conclusion or

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1 made a finding as far as those events?

2 A. Only from things I've been told.

3 Q. Okay. What were you told?

4 A. I was told that I was -- their part of the
5 investigation revealed I did nothing wrong.

6 There's no criminal charges or any reason to be
7 criminal charges against me.

8 Q. Okay. And who told you that?

9 A. I don't remember.

10 Q. You had been mentioning Mr. Safranko, and I know
11 that I've said it a few times before: I'm just
12 going to stress, to the extent that any answer
13 requires information that he gave you, you need
14 to let us know in advance that that's where
15 information is coming from.

16 A. Okay.

17 Q. You had mentioned Mr. Safranko as being paid for
18 by the City of Troy; that's correct?

19 A. Yes.

20 Q. When was the last time you spoke with
21 Mr. Safranko?

22 A. It has been several months.

23 Q. Do you know whether Mr. Safranko is still your
24 attorney?

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1 A. Yes, he is.

2 Q. And how do you know that he's still your
3 attorney?

4 A. Because we never stated we were canceling our
5 agreement.

6 Q. Were you on medical leave from the department for
7 any period of time?

8 A. Prior to the incident?

9 Q. No, after the incident.

10 A. Yes.

11 Q. For what period of time were you on medical
12 leave?

13 A. I'm still listed as being injured on duty.

14 Q. You had testified that you last received
15 treatment in July of 2016?

16 A. Yes.

17 Q. Okay. I don't know the procedures for the City
18 of Troy Police Department, but generally you have
19 to see some form of police surgeon or doctor of
20 some sort to be cleared to return to duty?

21 A. Yes.

22 Q. Have you seen a police surgeon or doctor to be
23 cleared to return to duty?

24 A. No.

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1 Q. Have you requested to see a police doctor or
2 surgeon?

3 A. No.

4 Q. To your knowledge -- withdrawn.

5 Have you informed the City of Troy Police
6 Department that you no longer have received
7 treatment since July of 2016 for this incident?

8 A. Yes.

9 Q. Have you asked to return to active duty?

10 A. Yes.

11 Q. Who have you discussed with -- withdrawn.

12 Who did you request permission from to
13 return to active duty?

14 A. Captain Kehm, and I've also spoken with the
15 mayor.

16 Q. What did Captain Kehm say to you after you
17 requested to return to active duty?

18 A. That he'd work on it.

19 Q. When was the first time you made the request to
20 return to active duty?

21 A. Early July 2016.

22 Q. When was the last time that you discussed with
23 Captain Kehm your desire to return to active
24 duty?

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1 A. Maybe a month ago.

2 Q. Are these requests -- were these requests all
3 oral, or are there some in emails as well?

4 A. Oral.

5 Q. When you're out on medical leave, that's
6 technically the term; correct?

7 A. Yes.

8 Q. Okay. When you're out on medical leave, are you
9 receiving full salary?

10 A. Yes.

11 Q. Do you have -- withdrawn.

12 Generally when an officer from a police
13 department is out on medical leave, they have to
14 go periodically for follow-up appointments with a
15 police surgeon or doctor. Are you familiar with
16 that concept?

17 A. We have where you see --

18 MR. ASPLAND: I think his question is a yes
19 or a no.

20 A. Yes.

21 Q. Does the City of Troy have a requirement that
22 officers that are out on medical leave come in
23 for periodic examination by a surgeon or doctor?

24 A. No.

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1 Q. Have you in fact come -- withdrawn.

2 Have you in fact visited any City of Troy
3 employed doctor for -- withdrawn.

4 Have you been examined by any doctor in the
5 employment of the City of Troy in connection with
6 this injury?

7 A. Medical doctor?

8 Q. (Nodding.)

9 A. No.

10 Q. Have you visited with a City of Troy retained
11 psychologist in connection with this incident?

12 A. Yes.

13 Q. When was the last time that you visited with a
14 psychologist?

15 A. July 2016.

16 Q. Subsequent to July of 2016, have you been
17 examined by any City of Troy employed physician
18 in connection with the injuries that you
19 sustained on April 17th, 2016?

20 A. I'm sorry, can you repeat that, please.

21 Subsequent to July?

22 Q. Wait, she's going to read that back.

23 (The requested testimony was read back.)

24 A. No.

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1 Q. Did you miss any time from your employment with
2 the Town of Greenbush after April 17th, 2016?

3 A. Yes.

4 Q. When did you return to work for the Town of
5 Greenbush after April 17th, 2016?

6 A. Mid-June 2016.

7 Q. Have you worked at least the same number of hours
8 that you worked prior to April 17th, 2016, since
9 returning to the Town of Greenbush?

10 A. Yes.

11 Q. Are you under any restrictions that you're aware
12 of by the Town of Greenbush as far as your
13 employment there?

14 A. No.

15 Q. Okay. You also mentioned that you had discussed
16 with the mayor your desire to return to active
17 duty. Do you remember that answer?

18 A. Yes.

19 Q. When did you first have that conversation?

20 A. December of 2016.

21 Q. What do you recall about the conversation?

22 A. We discussed -- he was under the impression that
23 I was back to work. He did not know I was not.
24 We met, I told him I wanted to go back to work.

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1 Q. And what did the mayor say to you?

2 A. He said he would work on it.

3 Q. You had mentioned a PBA rep?

4 A. Yes.

5 Q. What is his name or her name?

6 A. At the time of the incident it was Tom Hoffman.

7 Now, after October of last year it's

8 Aaron Collington.

9 Q. Is Aaron male or female?

10 A. Male.

11 Q. Have you made any requests to your PBA rep to --
12 either of these individuals to return to active
13 duty?

14 A. Yes.

15 Q. And what, if anything, have they told you?

16 A. They're going to work on it.

17 Q. Have you ever gotten anything in writing in
18 connection or in response to any of your requests
19 you made to return to active duty?

20 A. No.

21 Q. Okay. Let's go back to the duty roster. Yes,
22 first platoon daily sheet. Thank you.

23 There's an individual there named Dean. Do
24 you see that?

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1 A. I do.

2 Q. What's Dean's first name?

3 A. David.

4 Q. Do you socialize with David Dean outside of being
5 employed by the Troy City Police Department?

6 A. Yes.

7 Q. How long have you known David Dean?

8 A. I've known him informally just because we both
9 work the same department. We became more social
10 when I started working the same shift with him in
11 September of 2014.

12 Q. Do you still socialize with David Dean outside of
13 the workplace?

14 A. Yes.

15 Q. What's Parker's first name?

16 A. Christopher.

17 Q. Do you socialize with Christopher Parker outside
18 of the workplace?

19 A. Yes.

20 Q. Was that prior to your becoming employed by the
21 Troy Police Department?

22 A. No. Same with officer Dean; I knew him, but I
23 didn't get to know him well until I started
24 working the shift with him.

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1 Q. But you guys started working shifts together,
2 then you became social friends as well?

3 A. Yes.

4 Q. There's the evidence technician, Marble. What's
5 his first name?

6 A. Donald.

7 Q. Did you know Donald Marble prior to becoming
8 employed by the City of Troy Police Department?

9 A. No.

10 Q. Do you socialize with Donald Marble outside of
11 the City of Troy Police Department?

12 A. No.

13 Q. There's an individual written by hand, Fitch?

14 A. Yes.

15 Q. What is Fitch's first name?

16 A. William.

17 Q. Do you socialize with William Fitch outside of
18 the City of Troy Police Department?

19 A. I have been out and run into him, but we don't
20 make plans to go out, no.

21 Q. So understand, I mean, the pattern of the
22 questions that I'm asking --

23 A. Yes.

24 Q. -- is whether these peoples are friends of yours,

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1 acquaintances of yours, close friends of yours,
2 people that you, you know, just co-exist in the
3 workplace.

4 A. Understood.

5 Q. What's Pollay's first name?

6 A. Christopher.

7 Q. Am I pronouncing that correctly?

8 A. It's Pollay.

9 Q. Did you know Christopher Pollay prior to joining
10 the City of Troy Police Department?

11 A. No.

12 Q. Do you socialize with Christopher Pollay outside
13 of the City of Troy Police Department?

14 A. No.

15 Q. Did you have any relatives who work for the City
16 of Troy?

17 A. No.

18 Q. Okay. You had mentioned a spouse. I'm not
19 asking your spouse's name, but does your spouse
20 have relatives who are employed by the City of
21 Troy?

22 A. No.

23 Q. What's Gaudette's first name?

24 A. Robert.

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- 1 Q. Did you know Robert Gaudette prior to becoming
2 employed by the City of Troy?
- 3 A. No.
- 4 Q. Do you socialize with Robert Gaudette outside of
5 the City of Troy Police Department?
- 6 A. Yes.
- 7 Q. What's Daurio's first name?
- 8 A. It's pronounced Daurio.
- 9 Q. Okay.
- 10 A. It's Kristopher, with a K.
- 11 Q. Okay. Kristopher Daurio, did you know
12 Kristopher Daurio prior to becoming employed by
13 the City of Troy Police Department?
- 14 A. No.
- 15 Q. Do you socialize with Kristopher Daurio outside
16 of the workplace?
- 17 A. No.
- 18 Q. This one I'm considered I may not be pronouncing
19 correctly. There's a Feeley?
- 20 A. Yes.
- 21 Q. Okay. Who is Feeley?
- 22 A. Thomas Feeley.
- 23 Q. Okay. Did you know Thomas Feeley prior to
24 joining the City of Troy Police Department?

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1 A. No.

2 Q. Do you socialize with Thomas Feeley outside of
3 the City of Troy Police Department?

4 A. No.

5 Q. And there's a Galligan?

6 A. Yes.

7 Q. What's Galligan's first name?

8 A. Brandon.

9 Q. Did you know Brandon Galligan prior to joining
10 the City of Troy Police Department?

11 A. No.

12 Q. Do you socialize with Brandon Galligan outside of
13 the City of Troy Police Department?

14 A. No.

15 Q. Sergeant Bornt. Did you know Sergeant Bornt
16 prior to joining the City of Troy Police
17 Department?

18 A. No.

19 Q. Do you socialize with the sergeant outside of the
20 workplace?

21 A. No.

22 Q. Are there any sergeants that you socialize with
23 outside of the workplace?

24 A. Yes.

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1 Q. And who is that?
2 A. Sergeant Becker.
3 Q. Was Sergeant Becker involved in any way in the
4 events that took place on April 17th, 2016?
5 A. Not to my knowledge.
6 Q. You didn't see him at the scene?
7 A. No.
8 Q. Did he visit you in the hospital?
9 A. Yes.
10 Q. To your knowledge, was he involved in the
11 investigation that you were told the results of?
12 A. To the best of my knowledge, he was not.
13 Q. Sergeant White, did you know him prior to joining
14 the City of Troy Police Department?
15 A. No.
16 Q. What's his first name?
17 A. Raymond.
18 Q. Do you socialize with Sergeant Raymond White
19 outside of the workplace?
20 A. No.
21 Q. I think I asked you about Captain Montanino
22 prior, but I'll ask it again just to make sure
23 that I covered it: Did you know Captain
24 Montanino prior to him becoming a field training

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1 officer?

2 A. No.

3 MR. TORCZYNER: Off the record.

4 (An off-the-record discussion was held.)

5 BY MR. TORCZYNER:

6 Q. Why did you apply with the City of Troy to be a
7 police officer?

8 A. I went to college at Rensselaer Polytechnic
9 Institute in the City of Troy, and I liked the
10 area.

11 Q. Did you get a degree from there?

12 A. I did.

13 Q. What is your degree in?

14 A. Applied mathematics with a minor in brain and
15 behavior in psychology.

16 Q. Did you pursue a career in your major?

17 A. No.

18 Q. How long after you graduated from, if I said RPI,
19 you'd know what I'm referring to; right?

20 A. Yes.

21 Q. How long after you graduated from RPI did you
22 apply to the City of Troy Police Department?

23 A. I applied before I graduated.

24 Q. Where were you in the hierarchy of school? Were

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1 you a rising junior or --

2 A. I took the civil service test during my senior
3 year. It was November or December of my senior
4 year.

5 Q. How many times did you take that test?

6 A. Once.

7 MR. TORCZYNER: Can we take a break for a
8 minute?

9 (A recess was taken.)

10 BY MR. TORCZYNER:

11 Q. We talked before about the events leading up to
12 your pursuit of Edson Thevenin, and we had left
13 off where you had pulled over to the side of the
14 road, and Edson Thevenin had pulled over to the
15 side of the road slightly up the block from where
16 you were.

17 Do you remember giving those answer?

18 A. Yes.

19 Q. When was the next time after you pulled over to
20 the side of the road that you saw Edson Thevenin
21 that night?

22 A. I waited for maybe 30 seconds to a minute in the
23 spot I was in. The reason is when Mr. Thevenin
24 -- well, when the vehicle pulled to the side of

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1 the road -- I saw the vehicle maybe a minute
2 later; that's my answer.

3 Q. Okay. So you pulled over for about 30 seconds to
4 a minute, and then about a minute later the car
5 passed you?

6 A. No. I drove around the block, and I saw the
7 vehicle was still parked and I drove away.

8 Q. Okay. Other than the fact that the car had made
9 a wide turn, was there any other reason that you
10 were following the vehicle?

11 A. No.

12 Q. Were the windows tinted?

13 A. Not that I recall.

14 Q. Was there -- withdrawn.

15 Were you considered or did you have thought
16 that there was an equipment violation on that
17 vehicle?

18 A. No.

19 Q. As far as you recall, it had all of its
20 taillights, headlights, things of that nature
21 working; correct?

22 A. As far as I recall.

23 Q. So the car made that wide turn, and it then
24 pulled over, and then you pulled over, and then

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1 about a minute later, you saw it on a different
2 street; is that the story?

3 A. No, I drove the around block and I saw it was
4 still parked where it was, and then I drove away.

5 Q. Okay. Which direction, if you recall, did you
6 drive after that?

7 A. I drove east on State Street.

8 Q. And where did you go from there?

9 A. I don't know my routes, but I ended up in the
10 county office parking lot, which is -- their
11 address is -- corner of 7th Avenue and Congress
12 Street.

13 Q. How long did you stay in that parking lot?

14 A. Matter of minutes.

15 Q. And why did you leave that parking lot?

16 A. Because patrol officers were dispatched to a call
17 for a large house party in the north central part
18 of the city.

19 Q. And did you leave the parking lot in order to
20 assist on that call or supervise on that call?

21 A. Yes.

22 Q. Did you eventually make it to that house party?

23 A. No.

24 Q. And why did you not go to the house party?

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- 1 A. Because I ended up stopping Mr. Thevenin.
- 2 Q. Where did you next see Mr. Thevenin?
- 3 A. He turned from Fulton Street onto 6th Avenue and,
- 4 again, made a wide turn, and that drew my
- 5 attention to the vehicle.
- 6 Q. Okay. About what time was this?
- 7 A. Approximately 3:10.
- 8 Q. What is the compass direction of Fulton at that
- 9 intersection?
- 10 A. Fulton Street is a one way eastbound.
- 11 Q. Okay. And the street he was turning from Fulton
- 12 onto runs which direction?
- 13 A. North and south.
- 14 Q. And which way was he turning?
- 15 A. North.
- 16 Q. And is that two lanes in each direction, or one
- 17 lane in each direction?
- 18 A. It's two lanes -- yeah, 6th Avenue one way in
- 19 each direction at that spot.
- 20 Q. Where the parking lane is in addition, correct,
- 21 or no?
- 22 A. On one side it has a parking lane.
- 23 Q. So he turns onto -- he turns north onto 6th; is
- 24 that correct?

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1 A. Yeah.

2 Q. And he turns wide which means he winds up in the
3 parking lane?

4 A. He went wide, and then turned back, and then
5 straightened out again. Perhaps saying he turned
6 wide was incorrect; just he made an odd turn.

7 Q. Okay. Did you see whether he had a cell phone at
8 that point?

9 A. No.

10 Q. Did you see whether he had anything in his hands
11 at that point?

12 A. I couldn't see him at all at that point.

13 Q. Where were you positioned when he made that turn?

14 A. I was driving northbound on 6th Avenue. He
15 turned in front me.

16 Q. After he turned in front of you and made that
17 turn, which you've now described as an odd turn,
18 what did you do next?

19 A. At this point we both pulled up -- well, we both
20 approached 6th Avenue at Federal Street driving.

21 Q. Were you parallel to his car, or behind it?

22 A. I was behind it.

23 Q. So his car first approached 6th and Federal, and
24 you were behind him?

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1 A. Yes.

2 Q. Was there a traffic control device at that
3 intersection?

4 A. Yes.

5 Q. What kind of traffic control device was there?

6 A. A traffic light.

7 Q. And what color was the traffic light as he
8 approached 6th and Federal?

9 A. Green.

10 Q. Okay. What did he do when he reached that
11 traffic control device?

12 A. At that point the northbound lane splits into two
13 lanes; he stayed in the right lane.

14 Q. Okay. Was he going above the legal speed limit
15 at that point?

16 A. No.

17 Q. What did you do after he went into that right
18 lane?

19 A. I went to the left lane with the purpose of
20 driving past him to go to this call.

21 Q. To go to?

22 A. To this call, the house party.

23 Q. The house party call?

24 A. Yes.

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1 Q. And what happened after you went into the left?

2 A. I went to drive past him, and he swerved into my
3 lane causing me to brake so I couldn't pass him,
4 and then he swerved back into his lane.

5 Q. And what did you do next after he swerved into
6 and then out of your lane?

7 A. My plan was to still drive past him and go, but,
8 again, as soon as I went to go past him he
9 swerved into my lane and then back into his.

10 Q. Did you have concerns that he was doing this
11 intentionally?

12 A. No.

13 Q. Did you have concerns that he was attempting to
14 injure you?

15 A. No.

16 Q. And what did you do after this second swerving?

17 A. I don't recall if he did it a third time or if I
18 chose at that point to make a traffic stop.

19 Q. Were you parallel to him this point when you made
20 the traffic stop?

21 A. No, I pulled in behind him.

22 Q. Did you drop back and allow his vehicle to get
23 ahead of you?

24 A. I could never get past him because he swerved. I

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1 was behind him the whole time.

2 Q. Okay. When you made the traffic stop did you use
3 lights, lights and sirens, some combination
4 thereof?

5 A. Just lights.

6 Q. Okay. And when you used your lights, did you --
7 withdrawn.

8 Does your car have a microphone in it?

9 A. Do you mean like a public address system?

10 Q. Yes, I do.

11 A. Yes, it does.

12 Q. Did you use the public address system when you
13 made the traffic stop?

14 A. No.

15 Q. So you just used your light?

16 A. Yes.

17 Q. Your car was a marked vehicle, or unmarked
18 vehicle?

19 A. Marked.

20 Q. Said "patrol sergeant" on the side?

21 A. Patrol supervisor.

22 Q. Patrol supervisor on the side. Thank you.

23 What did Mr. Thevenin do after you turned
24 your lights on?

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- 1 A. Pulled over immediately -- well, relatively
2 immediately.
3 Q. And what street was that on that you pulled over?
4 A. 6th Avenue.
5 Q. Was he in a parking lane, or was he in a lane of
6 traffic?
7 A. Lane of traffic.
8 Q. But he was by the curve?
9 A. Yes.
10 Q. And after he pulled over what did you do next?
11 A. I pulled in behind him.
12 Q. Did you radio --
13 A. Yes.
14 Q. And you pulled in behind him?
15 A. I radioed that I was on a traffic stop.
16 Q. Do you remember the term that you used?
17 A. 112 central traffic stop.
18 Q. 112 being your car, your unit number or --
19 A. My identifier.
20 Q. Your identifier. Okay. At that point could you
21 tell whether there was anyone else in the car
22 with him?
23 A. I could tell it was occupied by one person, or
24 appeared to be occupied by one person.

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- 1 Q. And after he pulled over and you pulled over,
2 what did you do next?
3 A. I turned on my takedown lights and my spot light.
4 Q. What are "takedown lights"?
5 A. Just clear spot lights that are in the light bar.
6 Q. Do you know -- do they have a purpose in turning
7 them on, or is there a specific instruction
8 you're given as to why you turn them on?
9 A. Just because they're bright lights and helps me
10 see when it's dark out.
11 Q. And the spot light in addition?
12 A. Yes.
13 Q. The spot light is on the light bar or it's on the
14 door or somewhere else?
15 A. On the door frame.
16 Q. Okay. After turning on the lights, what did you
17 do next?
18 A. I got out of the car and approached the vehicle.
19 Q. Was the vehicle's driver's side window open, or
20 closed at that point?
21 A. He opened it. I don't know if it was closed when
22 I walked up and he opened it, or if it was open
23 the entire time.
24 Q. Fair enough. When you approached the vehicle,

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1 did you have your service weapon on your belt?

2 A. Yes.

3 Q. It was a holster; correct?

4 A. (Nodding.)

5 Q. Okay. Did the holster have a clasp or fastening
6 device that keeps the gun in place?

7 A. Yes.

8 Q. Do you recall whether the gun was buckled in
9 place or clasped in place at that point?

10 A. It was.

11 Q. Okay. You had not unfastened it at that point?

12 A. Correct.

13 Q. And what happened when you approached the
14 vehicle?

15 A. I started talking to Mr. Thevenin.

16 Q. Do you recall the conversation?

17 A. I do.

18 Q. What was said?

19 A. I asked him for his license and registration; I
20 asked him if it was his vehicle. He said
21 originally yes, and quickly said, No, it's
22 registered to my girl.

23 I said okay. That matched up with the fact that
24 I already run it and it came to a female, so that

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1 made sense to me.

2 I told him I stopped him because he had
3 swerved just down the road. He said he didn't
4 realize he had done that. I asked him how much
5 he had to drink, because I could smell a strong
6 odor of an alcoholic beverage. He said, nothing
7 -- or none.

8 I said, Come on, man, I can smell it.

9 He goes, What do you mean you can smell it.

10 I said, I can smell it, and I know it's not me.

11 He goes, Okay, I had beer.

12 I said, Okay, no problem.

13 He said he could not find the registration. He
14 gave me his license. I said, All right, just
15 wait right here, and I'll be right back.

16 Q. Did you smell marijuana on him?

17 A. No.

18 Q. So the only thing that you mentioned to him that
19 you had smelled was alcohol; correct?

20 A. Yes.

21 Q. Did you in fact smell alcohol at that point?

22 A. Yes.

23 Q. And he gave you his license, and you returned to
24 your vehicle at that point?

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1 A. Yes.

2 Q. Did you in fact enter your vehicle?

3 A. Yes.

4 Q. And what did you do next after you entered your
5 vehicle?

6 A. Just prior to getting to my car I radioed to the
7 officers on the house party call just to check on
8 their status. They told me they were okay and
9 clearing the party out. I made some mention of
10 that this guy was -- the guy I was out with was
11 impaired, and I can't let him drive away,
12 something along those lines. And then I got in
13 my car.

14 Q. Did you call for a tow truck?

15 A. No.

16 Q. Is that part of an operating procedure when you
17 feel that someone's impaired to call for a tow
18 truck?

19 A. After an arrest was made we would call for the
20 tow truck.

21 Q. Did you at this point know that you were going to
22 make an arrest?

23 A. No.

24 Q. But you indicated that you couldn't let him

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1 drive, or something of that nature?

2 A. Yes.

3 Q. Okay. So why did you run his license?

4 A. To see if he was valid or if he was suspended or
5 wanted.

6 Q. Okay. And what did you learn from your MTD?

7 A. That his license was valid, and had no wants or
8 warrants.

9 Q. So what did you do next after you ran his license
10 through MDT?

11 A. I knew I was going to be doing a field sobriety
12 test. So I got my prescreening device out of my
13 bag, I put it in my back pocket, and I took a
14 fresh straw out as well, and I stuck that in my
15 magazine pouch.

16 Q. Okay. When we talk about prescreening device,
17 we're talking about what colloquially would be
18 called a breathalyzer; right?

19 A. No, colloquially I would say the breathalyzer is
20 the DataMaster at the station.

21 Q. Okay. What would you call this then?

22 A. Prescreening device, or the brand name is
23 Alco-Sensor.

24 Q. Alco-Sensor. Okay. So why don't you use the

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1 term Alco-Sensor just so we're all on the same
2 page.

3 A. Okay.

4 Q. Did you approach the vehicle after taking these
5 things out of your bag and putting it in your
6 pocket?

7 A. Yes.

8 Q. And what happened when you approached the
9 vehicle?

10 A. I asked Mr. Thevenin to turn the vehicle off. He
11 reached up, turned the keys off, left them in the
12 ignition. I said, Since you've had something to
13 drink, I just want to make sure you're okay to
14 drive. I'm going to ask you to step out of the
15 car and come back here with me.

16 Q. Did he in fact exit the vehicle?

17 A. Yes.

18 Q. Was he in any way disrespectful to you?

19 A. No.

20 Q. Did he argue with you in any way?

21 A. No.

22 Q. When he exited the vehicle was he walking, in
23 your opinion, regularly, staggering, something
24 else?

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- 1 A. He kept his hand on the car as he walked from the
2 driver's door to the back, but other than that I
3 did not notice anything remarkable.
- 4 Q. Did you ask him any questions at this point?
- 5 A. Yes.
- 6 Q. What did you ask him?
- 7 A. I'll take a step back: I did turn -- prior to
8 getting out of my car I turned all my flashing
9 lights off and I just had the arrow stick on the
10 back of my light bar going, so he would not or I
11 would not see any of the flashing light. I asked
12 him if he was under the care of a doctor or a
13 dentist.
- 14 Q. Under the care of a doctor?
- 15 A. Doctor or a dentist.
- 16 Q. All right. I got to ask: Why did you ask him if
17 he was under the care of a dentist?
- 18 A. Because dentists prescribe narcotics.
- 19 Q. Okay. Did you have a concern that he was under
20 the influence of narcotics?
- 21 A. Just a standard question to find out if there is
22 impairment, whether it's drug or alcohol related.
- 23 Q. What was his response to this question?
- 24 A. He told me he had seen a dentist the previous

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1 week.

2 Q. Did you ask him what for?

3 A. I asked him if he was taking -- as a result of
4 that, if he was taking any medications, and he
5 told me no.

6 Q. What happened next?

7 A. I asked him if he was diabetic or epileptic, and
8 he stated no.

9 Q. Was he speaking English?

10 A. Yes.

11 Q. Did you have issues understanding what he was
12 saying?

13 A. He had impaired speech, but I could understand
14 what he was saying.

15 Q. Okay. What happened next after you asked him
16 whether he was a diabetic or epileptic?

17 A. He states no. I then asked him if any problems
18 with his hips, knees, or ankles, or any problems
19 walking, he stated no.

20 Q. Did you ask him to recite the alphabet?

21 A. No.

22 Q. Did you ask him to recite the alphabet backwards?

23 A. No.

24 Q. What happened next?

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- 1 A. I asked him where he was coming from.
- 2 Q. And what was his answer?
- 3 A. He stated he was at a house party with his
4 brother, but his brother became intoxicated and
5 was causing problems so he took him home, then he
6 went to get pizza, and then he went home.
- 7 Q. Okay. Did you know where his home was at that
8 point?
- 9 A. No. I knew his address on his license was
10 Watervliet, but I did not ask if that was a
11 current address.
- 12 Q. So after he tells you the story about his brother
13 and the pizza, what happens next?
- 14 A. I say, I just saw your car over by the pizza
15 shop, he parked there at the pizza shop on 4th
16 Street, where I saw him previously, is that when
17 you were getting pizza? And he said, Yes, and
18 then I went home. I responded, You didn't go
19 home because you're standing on the side of the
20 road with me. And he responded, Yeah.
- 21 Q. What do you recall happening next?
- 22 A. Well, I performed the horizontal gaze nystagmus
23 test.
- 24 Q. Was he standing for that test?

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- 1 A. Yes.
- 2 Q. And what was the result of that test?
- 3 A. He demonstrated all six clues.
- 4 Q. Okay. And what are those six clues?
- 5 A. Lack of smooth pursuit, nystagmus at maximum
- 6 deviation, and onset of nystagmus prior to
- 7 45 degrees.
- 8 Q. Based upon those clues as you described them,
- 9 what did you conclude?
- 10 A. He failed the test.
- 11 Q. Okay. Did you ask him to do any other tests?
- 12 A. Yes.
- 13 Q. Why?
- 14 A. Because the standardize field sobriety are
- 15 standardized, meaning we do the same test the
- 16 same way in the same order every time.
- 17 Q. Okay. So what was the next test that you
- 18 performed?
- 19 A. Vertical gaze nystagmus.
- 20 Q. And what was the result of that?
- 21 A. He demonstrated he had vertical gaze nystagmus.
- 22 Q. Is that sometimes called VNG?
- 23 A. VGN. Thank you.
- 24 MR. TORCZYNER: Off the record.

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(An off-the-record discussion was held.)

BY MR. TORCZYNER:

Q. What did you do next?

A. I advised that the next test would be the walk-and-turn test.

Q. And what did he say?

A. Okay.

Q. Did you ask him to in fact walk and turn?

A. I did. I gave him instructions that while I was giving him the instructions, I wanted him to stand with the right foot in front of the left foot. I gave him instructions deposition -- or directions.

Q. And what happened?

A. I asked him if he understood, and he stated no.

Q. He said he didn't understand what you wanted him to do?

A. Yes.

Q. And what did you do next?

A. He also -- when he stated that, he pointed to the curb. We were standing in the roadway, and asked me if that's what I wanted him to walk. I said, No, I don't want anybody falling over. It's an imaginary line. He said, Okay.

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1 At this point I gave him directions and
2 demonstration again and asked him if he
3 understood.

4 Q. And what happened after that?

5 A. He stated no.

6 Q. He stated, no, he didn't understand?

7 A. Correct.

8 Q. Was his -- English accent?

9 A. Not that I recall.

10 Q. So what happened next?

11 A. I gave the instruction and demonstration a third
12 time and asked him if he understood. He stated
13 yes.

14 Q. Did he perform the instructions you asked him to
15 do?

16 A. Yes.

17 Q. And what did he do?

18 A. He stepped off the line. He missed heel-to-toe,
19 and turned improperly, kept raising his arms. He
20 took ten steps in each direction instead of nine.

21 Q. And what did you do after he failed the test, for
22 lack of a better word?

23 A. I told him the next test was going to be the
24 one-leg stand test.

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1 Q. Did he understand what you mean?

2 A. I -- he just said okay. At that point, again, I
3 did a demonstration and gave directions and asked
4 him if he understood.

5 Q. And what did he say?

6 A. He stated no.

7 Q. And what happened next?

8 A. I gave the demonstration and instructions again.

9 Q. Do you recall at this point whether he understood
10 it?

11 A. I asked him, and he said yes.

12 Q. And what did he do?

13 A. He tried to start -- every time he would pick up
14 his right foot, he put it down, I would say, four
15 times. Then he actually got it up and started
16 counting, but within the first ten seconds he put
17 his foot down four times. At that point I said,
18 All right, that's 30 seconds. You can stop.

19 Obviously it was not 30 seconds, but I was
20 worried he was going to fall over so I stopped
21 the test.

22 Q. What happened after that?

23 A. I took out the prescreening device, the
24 Alco-Sensor. And I took the new tube out of its

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1 plastic, placed the tube on the Alco-Sensor, and
2 I asked him to blow into it.

3 Q. Did he?

4 A. No.

5 Q. Did he indicate that he did not want to?

6 A. He said that he was very nervous about blowing
7 into that because he had had two beers.

8 Q. And what was your response to that?

9 A. I said that's okay. I told him that it's a
10 prescreening device. All I can testify to is
11 that it tested positive for the presence of
12 alcohol. If he does not take a test, he would
13 get a traffic ticket. And whether he took it or
14 not was not going to change what was going to
15 happen next.

16 Q. And what did he say in response to that?

17 A. He said, Then I'll take the traffic ticket.

18 Q. Okay. Did you in fact issue him the traffic
19 ticket?

20 A. No.

21 Q. So after he said, I'll take the traffic ticket,
22 what happened next?

23 A. I put the Alco-Sensor in my back pocket, and I
24 told him that he was under arrest for DWI.

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1 Q. And what was his response to that?

2 A. He put his hands up, palms facing me, and said,
3 Whoa, whoa, I can't get arrested. I'm an
4 mechanic, I'll lose my job. Then he said, You
5 didn't tell me what I was being arrested for. I
6 said, I did tell you. I just told you it's for
7 DWI.

8 Q. And after you said "DWI," what did he do?

9 A. He just kept saying, I can't get arrested. I
10 kept telling him to turn around and put his hands
11 behind his back, and he kept just doing, No, no,
12 no.

13 Q. Did he put his hands on you at this point?

14 A. No.

15 Q. So he's saying, No, no, no.

16 Obviously this conversation continued for some
17 period of time. About how long did that, No, no,
18 no --

19 A. 10, 15 seconds. It wasn't a long conversation.

20 Q. So what happened after that?

21 A. I said, Let's not turn this into something it
22 doesn't have to be. You are under arrest.
23 I was speaking more sternly at this point, You
24 are under arrest, turn around, and put your hands

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1 behind your back.

2 Q. And what did he say?

3 A. He still didn't do it, and I repeated that one
4 more time.

5 Q. And then what happened next?

6 A. He turned sideways and placed his hands behind
7 his back.

8 Q. Okay. Did you begin to apply the handcuffs to
9 his hands?

10 A. I went up and I grabbed both of his hands with
11 both of my hands, trying to push them together so
12 I could hold both hands with one hand so I could
13 get my handcuffs out and put on him. But he kept
14 his hands and arms very rigged and stiff. I
15 could not move them.

16 Q. Were you giving verbal instructions during this
17 time?

18 A. Yes.

19 Q. What were those verbal instructions?

20 A. I said, Let's not turn this into a resisting, you
21 are under arrest. He just kept saying again, I
22 can't get arrested for this. And he stayed
23 rigid.

24 Q. What happens next?

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- 1 A. I got on the radio and said, 112, I need some
2 help here. And I continued to try to wrestle his
3 hands together.
- 4 Q. About how long was this wrestling going on?
- 5 A. Five, ten seconds.
- 6 Q. The radio that you used was on your person, or
7 did you go back to your car to use a radio?
- 8 A. It was on my person.
- 9 Q. Where was the key located for the radio?
- 10 A. My left shoulder.
- 11 Q. So you make this radio or you key in on the radio
12 with a call. And then what do you do next?
- 13 A. I just continued to try to get his hands
14 together.
- 15 Q. And where is he standing at this point?
- 16 A. We are standing between the two cars right behind
17 the trunk of his car.
- 18 Q. Is any part of his body touching the car?
- 19 A. No, he is standing sideways from the car. And,
20 no, we weren't right up on the trunk.
- 21 Q. Okay. What happened after this?
- 22 A. He said, Fuck this. Those were his words, and he
23 ripped his hands away from me.
- 24 Q. And then what did he do next?

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- 1 A. He started walking towards his car.
- 2 Q. And what did you do?
- 3 A. I grabbed the back of, it was either a jacket or
- 4 hooded sweater. I grabbed the top of it, and I
- 5 tried to pull him over backwards. I was
- 6 unsuccessful.
- 7 Q. How long tall was he?
- 8 A. About six-two.
- 9 Q. So he was about four inches taller than you?
- 10 A. Six inches. I'm five-eight.
- 11 Q. You're five-eight. Okay. What was the weight
- 12 difference between the two of you, best of your
- 13 recollection?
- 14 A. About 60 pounds.
- 15 Q. That he had 60 pounds on you?
- 16 A. Yes.
- 17 Q. You'd say he was about 250?
- 18 A. I would.
- 19 Q. Okay. And after you grabbed the back of his
- 20 jacket and was unsuccessful, what happened next?
- 21 A. I kept holding onto him with my left hand. I --
- 22 with my hand, I took out my OC. I reached around
- 23 the side of him, to the right side, and peppered
- 24 sprayed his face. It had no effect.

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1 Q. Is the use of pepper spray authorized in
2 attempting to make an arrest for DWI?

3 A. Yes.

4 Q. Is it something that's suggested by the City of
5 Troy Police Department?

6 A. It's suggested for the use of anybody who is
7 physically resisting arrest.

8 Q. What's the purpose of using the pepper spray?

9 A. To try to get pain compliance as well as to
10 distract him through UCAS inflammation.

11 Q. Which part of his body did you spray the pepper
12 spray on?

13 A. The right side of his face.

14 Q. Did you see whether any spray came out of the
15 canister?

16 A. Yes.

17 Q. Did you see whether any of the spray hit his
18 face?

19 A. Yes.

20 Q. And the spray did make contact with his face?

21 A. Yes.

22 Q. Did it make contact with his eyes?

23 A. I don't know.

24 Q. What happened after you applied the pepper spray

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1 the first time?

2 A. I -- still holding the pepper spray in my hand, I
3 used my right hand to also grab onto his
4 sweatshirt. I was trying to prevent him from
5 getting in his car long enough for help to get
6 there.

7 Q. Were you able to restrain him?

8 A. No.

9 Q. So you had your right hand on the pepper spray,
10 and your left hand on him; is that correct?

11 A. I was -- I still had the pepper spray in my right
12 hand, but I was also able to grab onto the back
13 of his outer garment with that hand as well.

14 Q. Are you right hand dominant or left hand
15 dominant.

16 A. Right hand.

17 Q. What happened next?

18 A. He gets to his car door. He's able to open his
19 car door, and he sits in the car. And when he
20 sat down, he was able to shear my hands off the
21 back of his shirt or outer garment.

22 Q. What do you mean by "shear"?

23 A. By the fact that he sat down hard. I'm holding
24 onto his hands, so now my hands hit the side of

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1 the car. I can't hold anymore because the force
2 of him going in tears my hands away.

3 Q. Understood. So he didn't actually pull your
4 hands, but the force of his him sitting down
5 pulled your hands off of him?

6 A. Yes.

7 Q. Okay. What happened next?

8 A. I peppered sprayed him again.

9 Q. Was the car in gear at that point?

10 A. No. The car was not on at that point.

11 Q. Okay. Which part of his face -- withdrawn.

12 Which part of his body did you use the
13 pepper spray on?

14 A. His face.

15 Q. Any particular part of his face?

16 A. No. I was aiming for, you know, the upper
17 portion: Nose and eyes. And I know I hit his
18 face, but I can't say exactly where it landed.

19 Q. Did you smell it?

20 A. Oh, yeah.

21 Q. Were you in any way impacted by the pepper spray?

22 A. No.

23 Q. Was that because of a resistance you built up to
24 it, or it happened to be you weren't impacted?

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1 A. I do no have a resistance to it. I just don't
2 recall being impaired by it.

3 Q. Okay. So after you peppered sprayed him a second
4 time, what did he do?

5 A. Again, he appeared to be unfazed.

6 (An off-the-record discussion was held.)

7 (The requested testimony was read back.)

8 BY MR. TORCZYNER:

9 Q. So what happened next after this second pepper
10 spraying?

11 A. I put my right forearm against his upper chest to
12 push him back in the seat because I intended on
13 reaching over the steering column to try to get
14 the keys out of the ignition.

15 Q. Was the car turned on at this point?

16 A. No.

17 Q. Did you have a belief that he was going to start
18 the car?

19 A. Yes.

20 Q. Why did you believe he was going to start the
21 car?

22 A. Based on the totality of the circumstances. He
23 appeared that he did not want to be arrested, and
24 he was going to leave the scene.

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1 Q. Okay. So what happened when you reached for the
2 keys?

3 A. He got his hand to the keys faster and turned the
4 car on.

5 Q. Okay. And what happened after he turned the car
6 on?

7 A. I then planned -- or I intended to reach for the
8 gear shift to prevent him from putting it into
9 gear.

10 Q. Did you have to reach across his body to reach
11 the gear shift?

12 A. Between his body and the steering wheel.

13 Q. Well, you were outside of the car at this point;
14 right?

15 A. I'm about halfway in the car with him.

16 Q. Was the door open?

17 A. Yes.

18 Q. Okay. Now, still -- withdrawn.

19 The door's open; you're partially in the
20 car. Is he seated in the car?

21 A. Yes.

22 Q. The gear shift is on the floor; correct?

23 A. Yes.

24 Q. Did he have a beer belly?

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- 1 A. He was just a large gentleman.
- 2 Q. Okay. Do you have to reach across his belly to
3 reach the gear shift?
- 4 A. I don't recall.
- 5 Q. Okay. Did he have a seat belt on?
- 6 A. No.
- 7 Q. What happened as you reached across the gear
8 shift?
- 9 A. He got to the gear shift first and put it in
10 drive.
- 11 Q. And what did you do after he put it in drive?
- 12 A. He immediately started driving north on 6th
13 Avenue with me still in the car. So I pushed out
14 of the car because I didn't want to get dragged
15 by him.
- 16 Q. Okay. Did you successfully pull yourself out of
17 the car?
- 18 A. Yes.
- 19 Q. Any part of the car strike your body?
- 20 A. No.
- 21 Q. As the car pulled away, where were you?
- 22 A. I fell onto the roadway.
- 23 Q. Okay. And what did you do after you fell on the
24 roadway?

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1 A. I got up. As I'm running to my car, I radio that
2 my words were something along the lines of, He
3 just tried to run me over. He's northbound on
4 6th Avenue.

5 Q. Did he try to run you over?

6 A. No. I don't know why I said what I said, but
7 that is what I said.

8 Q. Okay. Did you hear a response from any other
9 member of the police department?

10 A. Yes.

11 Q. What did you hear?

12 A. Officer Dean radioed to me asking for a vehicle
13 description, because he stated he was at 6th
14 Avenue and Middleburgh, which is just a couple
15 blocks north of where we were. And I gave him
16 that vehicle description.

17 Q. What rate of speed was Thevenin's vehicle
18 traveling at at this point, if you know?

19 A. I would not say it was speeding, but I can't --
20 it was not an abnormally fast rate of speed, but
21 I can't give you a number.

22 Q. Okay. You are trained in recognizing speeds of
23 vehicles; correct?

24 A. Yeah.

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1 Q. So you know it wasn't speeding; you just don't
2 know what the number was it was traveling?

3 A. Correct.

4 Q. Did you ever lose sight of the vehicle at any
5 point after you started this traffic spot where
6 you asked him to do the various DWI tests?

7 A. Yes.

8 Q. But at this point you could still see the vehicle
9 when you made that radio call?

10 A. Yes.

11 Q. What happened next after you made the radio call
12 and you heard the response from Officer Dean?

13 A. I got in my car. I started driving northbound.
14 I turned the lights and siren on in my car.

15 Q. As part of the traffic vehicle traffic stop for
16 DWI are you instructed to try to take the keys
17 out of the vehicle?

18 A. No.

19 Q. Was that something that you had done before?

20 A. No.

21 Q. And do you recall why you were attempting to do
22 so?

23 A. Because I didn't want him to drive away.

24 Q. What happened next?

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- 1 A. He turned eastbound on Hoosick Street, which
2 would be a right turn. I radioed that he turned
3 eastbound on Hoosick Street, and I turned
4 eastbound on Hoosick Street.
- 5 Q. Hoosick Street is how many lanes at that point?
- 6 A. Two: One eastbound, one westbound.
- 7 Q. Okay. Was that a wide turn, too?
- 8 A. I don't recall.
- 9 Q. Okay. So he makes the turn, you make the turn.
10 And you're both traveling which direction on
11 Hoosick Street?
- 12 A. Eastbound. He's driving eastbound in the
13 westbound lane.
- 14 Q. So he's in the wrong lane of traffic?
- 15 A. Yes.
- 16 Q. Were there other vehicles coming towards you?
- 17 A. Not that I remember.
- 18 Q. It's 3:00 in the morning so it's --
- 19 A. Yeah, it's a pretty busy road. But at that point
20 there was cars waiting at the traffic light to go
21 eastbound that he was driving past. But I do
22 recall him coming westbound.
- 23 Q. And what happened next?
- 24 A. Captain Montanino got on the radio, gave some

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1 information, and told me that he was going to
2 call the pursuit, meaning, he's going to take
3 care of the radio transmission.

4 Q. So he's going to let everyone else know where you
5 are?

6 A. Yes.

7 Q. And that way you just drive?

8 A. Correct.

9 Q. Okay. Did you respond to him?

10 A. No.

11 Q. Okay. What happened next?

12 A. Mr. Thevenin's vehicle made a U-turn and turned
13 westbound onto Collar City Bridge.

14 Q. How far did Mr. Thevenin's vehicle make it onto
15 that bridge after he made that U-turn?

16 A. Not far. I -- again, with everything happening
17 so quickly I can't tell you an exact distance.
18 But he did not make it far at all.

19 Q. Were you using sirens at this point?

20 A. Yes.

21 Q. When did you start using the sirens?

22 A. As soon as I got in my car I turned my lights on
23 and I hit the siren button, so pretty much the
24 same time.

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1 Q. So Mr. Thevenin makes that U-turn onto the Collar
2 City Bridge, and he doesn't make it that far
3 before what happens?

4 A. Well, I make the turn onto the bridge. I see his
5 car has already crashed into the left side of the
6 roadway.

7 Q. Which part of his car hit the left side of the
8 roadway?

9 A. The driver's side front corner.

10 Q. Was it parallel to the cement barrier, or was it
11 at angle to the cement barrier?

12 A. At an angle.

13 Q. And can you approximate what the angle was?

14 A. Greater than zero, less than 90.

15 Q. Certainly less than 90. It wasn't perpendicular;
16 right?

17 A. Correct.

18 Q. And then what did you do with your vehicle after
19 you noticed that his vehicle had crashed into the
20 barrier?

21 A. I put my car -- I passed him, and I put my car in
22 front of his to ensure that he would not be able
23 to drive away.

24 Q. How far were you from his vehicle?

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- 1 A. Couple of feet.
- 2 Q. Were you giving commands at that point?
- 3 A. At this point I'm still in my car, no.
- 4 Q. Well, you have the microphone in your car; right?
- 5 A. I did not use it.
- 6 Q. Okay. So what happened next after you pulled
- 7 your vehicle in front of his at an angle?
- 8 A. I look over to my bag. I have in the passenger
- 9 seat, because I always carry my big Maglite,
- 10 large flashlight. I had it in my pocket when I
- 11 was on the side of the road with Mr. Thevenin.
- 12 When I got back in I threw it in there. It's
- 13 just a force of habit, working midnights I always
- 14 get my light out. I looked over to see where it
- 15 was. I grabbed that. At this point I turned to
- 16 get out of my car.
- 17 Q. And what is Mr. Thevenin doing at this point?
- 18 A. I had not realized he had moved his car, because
- 19 when I opened my door I'm hitting the front of
- 20 his car and I'm thinking that, you know, I didn't
- 21 park too close; I don't know why I'm hitting his
- 22 car. And at that point I go to get out of my
- 23 car. I squeezed out.
- 24 Q. When you say you squeezed out, you were able to

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1 open the door and get out of the car?

2 A. I could partially open the door and get out, yes.

3 Q. Okay. And is your car on at this point?

4 A. Yes.

5 Q. And as you exited the vehicle and you realize
6 that his car had moved and now was up against
7 your vehicle, was his car still moving?

8 A. I don't remember what it doing at that exact
9 moment.

10 Q. Okay. Can you see Mr. Thevenin at this point?

11 A. My goal was to get out and go to the passenger
12 side of the car. I figured that was where I -- I
13 could get to the safest, and try to get in the
14 car, stop the car, and deal with Mr. Thevenin.
15 So at this particular moment I'm not even looking
16 at him. I'm just trying to get out of the way.

17 Q. Okay. I'm going to ask that you just answer the
18 part of the question that I ask, although, you do
19 understand you're giving more information.

20 A. Fair enough.

21 Q. When you exited the vehicle, did you see Mr.
22 Thevenin?

23 A. No.

24 Q. And you indicated that you were concentrating on

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1 getting to the passenger side of Mr. Thevenin's
2 vehicle?

3 A. Yes.

4 Q. Was the passenger side window of Mr. Thevenin's
5 vehicle open?

6 A. I don't know.

7 Q. Okay. What was the goal of reaching the
8 passenger side of his vehicle?

9 A. To get in the car and turn it off.

10 Q. Do you know whether the car was locked or
11 unlocked?

12 A. I did.

13 Q. Okay. So did you have a belief that the car was
14 unlocked?

15 A. I, at this point, was not developing beliefs. I
16 was just trying to get there.

17 Q. Okay. So your door is partially touching
18 Mr. Thevenin's vehicle at this point; correct?

19 A. Yes.

20 Q. Which part of Mr. Thevenin's vehicle is that door
21 touching?

22 A. His front bumper.

23 Q. Flush with the front bumper?

24 A. I have no idea.

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1 Q. Are you giving verbal commands at this point?

2 A. I'm just yelling "stop."

3 Q. Did Mr. Thevenin respond to you?

4 A. Not that I noticed.

5 Q. Sirens still on?

6 A. I don't know if mine was. I know Captain
7 Montanino's was.

8 Q. At the time you exited the vehicle was Captain
9 Montanino already there?

10 A. I know he was right behind me in his car, so,
11 yeah, he was there.

12 Q. Okay. Did you see Captain Montanino's vehicle
13 when you exited your vehicle?

14 A. I was not looking that way. I was just
15 concentrating on the car, so, no.

16 Q. So what happened after you got out of the
17 vehicle, after you were able to get out between
18 the door?

19 A. I was immediately stuck between his car and my
20 car.

21 Q. Did your entire body get out of your car?

22 A. Yes.

23 Q. What was causing you to become stuck; which part
24 of the vehicle was making you stuck?

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1 A. His front bumper was pushed up against my lower
2 left leg, pushing that against the side of my
3 car.

4 Q. Did you attempt to get back into your car at that
5 point?

6 A. I couldn't move. I was still trying to get off
7 to the passenger side. That's just what I was
8 concentrating on, and that's where I went --
9 tried to.

10 Q. Was his car moving at that point?

11 A. It was -- I was stuck. His engine was revving,
12 but it was not moving. It was pushing me into my
13 car. It had nowhere to go.

14 Q. At that point what did you do next?

15 A. I put my hands on the car to try to pry my leg up
16 out of it, and I was unsuccessful.

17 Q. Where were you trying to pry your leg up to:

18 Back into the car or out --

19 A. Just -- I'm sorry. Finish.

20 Q. I asked the question.

21 A. Just up. Worse case, I'll climb on his hood and
22 just pull my leg straight up and jump off his
23 hood.

24 Q. Did you at any point consider getting back into

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1 your car?

2 A. I couldn't move. I couldn't get back to my car.

3 Q. Was any part of your body inside of your car at
4 this point?

5 A. I don't think so, but I don't know.

6 Q. What happened next?

7 A. Just the pain in my leg was absolutely
8 unbearable. I would like to think I have a high
9 tolerance for pain. But when it came to this,
10 just the pain was building. And as he revved, it
11 just got worse and worse and worse. And honestly
12 I was just praying my leg would break because I
13 figured once it breaks, it can't hurt this bad
14 anymore.

15 Q. Okay. Although I understand that you're giving
16 me your impressions, and if I'm asking you what
17 occurred on the next event, I'm just asking what
18 specifically occurred. And we can deal with the
19 motions and whatnot on the transcript at a later
20 date.

21 What happened next?

22 A. I was still yelling "stop." And at that point I
23 drew my gun and I fired.

24 Q. Okay. Which direction were you facing when you

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1 fired?

2 A. I was facing straight on him, straight at him.

3 Q. Could you see him?

4 A. Yeah.

5 Q. Which way was he looking?

6 A. Right at me.

7 Q. Okay. What did he do when you drew your weapon?

8 A. I don't think there was -- nothing changed, that
9 I noticed.

10 Q. So you drew your weapon; he was looking at you.

11 And, to your mind, he could see you and the
12 weapon?

13 A. Uh-huh.

14 Q. And then you fired the weapon?

15 A. Yes.

16 Q. How many times?

17 A. I don't know.

18 Q. Where were you aiming when you fired the weapon?

19 A. Center mass of Mr. Thevenin.

20 Q. Okay. So you're aiming directly toward Mr.
21 Thevenin in the vehicle?

22 A. Yes.

23 Q. I believe I asked you how many times you fired,
24 and your answer was you don't recall; is that

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1 correct?

2 A. At that time I had no idea how many shots I
3 fired.

4 Q. Okay. And why were you firing at center mass on
5 Mr. Thevenin?

6 A. Because I was going to die.

7 Q. Okay. At that point were you attempting to get
8 back into your vehicle?

9 A. Asked and answered. I couldn't move.

10 Q. Asked and answered guy is the one sitting to your
11 right.

12 MR. ASPLAND: I can object to that, but if he
13 wants to ask it a couple of times and you want to
14 answer it, you know, I'm giving him some leeway
15 there.

16 THE WITNESS: All right.

17 Q. Did you -- did any of the bullets make contact
18 with Mr. Thevenin?

19 A. I don't know.

20 Q. At any point after you pulled your vehicle in
21 front of Mr. Thevenin's vehicle did you see
22 Mr. Thevenin's vehicle back up?

23 A. No.

24 Q. Did you at the point where you were firing your

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1 weapon, did you see whether Captain Montanino's
2 vehicle was in contact with any part of
3 Mr. Thevenin's vehicle?

4 A. I wasn't looking at Captain Montanino's vehicle.

5 Q. I understand that. I just want to know whether
6 you saw it.

7 A. No.

8 Q. Did you give any form of verbal warning that you
9 were going to fire your weapon before you fired
10 it?

11 A. No.

12 Q. Did there come a time -- withdrawn.

13 When you fired the weapon, we've already
14 gone through you don't recall how many times you
15 fired. Why did you stop firing your weapon?

16 A. I don't know.

17 Q. Did Mr. Thevenin's vehicle disengage from your
18 vehicle after you fired the weapon?

19 A. No.

20 Q. Okay. What do you recall occurring next after
21 you finished firing your weapon? Again, we don't
22 know how many shots.

23 A. Something happened that caused me now to twist.
24 So instead of being straight on him, my left leg

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1 was now pinned sideways between his car and my
2 car, and that caused me to be thrown up on the
3 hood. So I'm laying across his hood with my head
4 towards the passenger side of the windshield.

5 Q. And at this point can you still see
6 Mr. Thevenin?

7 A. Yes.

8 Q. Did he appear to be alive?

9 A. He did not appear to be fazed.

10 Q. I'm sorry. I couldn't hear you.

11 A. He did not appear to be fazed.

12 Q. Appear to be fazed?

13 A. He appeared unaffected.

14 Q. Did you notice any gunshot wounds on him?

15 A. No.

16 Q. Okay. So you have the -- your body is now
17 partially on his hood; is that correct?

18 A. Yes.

19 Q. Okay. Which part of your body is on his hood?

20 A. Pretty much my whole body. I recall, I was using
21 my left hand to lift myself up off of his hood.

22 Q. Okay. But which part of your body is on the hood
23 before you're lifting yourself off?

24 A. My entire front of my body.

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1 Q. Did you sustain any abrasions to your chest?

2 A. I had a vest on.

3 Q. Bulletproof vest?

4 A. Outer vest carrier.

5 Q. What color was your shirt?

6 A. Navy blue.

7 Q. Do you know whether the shirt was torn in any way
8 during this?

9 A. I do not know.

10 Q. So your chest is lying face-flush on the vehicle?

11 A. Yes.

12 Q. Okay. Is your head touching the vehicle?

13 A. No.

14 Q. Until what point on your chest -- withdrawn.

15 From what part on your chest are you on the
16 vehicle: stomach, upper part of your chest?

17 A. I can't say.

18 Q. Understood. This is based on the best of your
19 recollection.

20 So your chest is lying on the hood, and at
21 that point your body has shifted somewhat,
22 twisted, in your words?

23 A. Yes.

24 Q. Okay. Are you on an angle on the hood, or flush

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1 on the hood, if you understand I'm what asking
2 you, or something else?

3 A. I'm laying, kind of, diagonally across with my
4 head going towards the passenger side of the
5 hood.

6 Q. Were the tires moving on his vehicle?

7 A. No.

8 Q. Okay. Do you hear the engine revving?

9 A. Yes.

10 Q. Okay. Is it constant?

11 A. Yes.

12 Q. Okay. Did the revving of the engine, while you
13 were lying on the hood, change in pitch at all?
14 Do you understand what I mean?

15 A. I do, and not that I recall.

16 Q. Did you see Mr. Thevenin's eyes at this point?

17 A. That, I don't remember.

18 Q. Was Mr. Thevenin sitting up, or slumped over at
19 this point?

20 A. He appeared to be sitting up.

21 Q. Did you see his hands at this point?

22 A. I don't remember.

23 Q. You don't remember seeing his hands?

24 A. At this point, no.

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1 Q. Okay. When you first fired the gun, did you see
2 Mr. Thevenin's hands?

3 A. Not that I remember.

4 Q. When Mr. Thevenin's vehicle -- when you shift,
5 had Mr. Thevenin's vehicle shifted as well, or is
6 it just you who had shifted?

7 A. I don't know.

8 Q. Is anyone talking to you during this time; do you
9 hear anything?

10 A. I heard nothing.

11 Q. The sirens are still going?

12 A. The sirens, I heard the engine. If people were
13 talking to me, I did not hear that.

14 Q. Okay. So after your body has now twisted --
15 let's back up. After the body has twisted,
16 you're not flush on the vehicle?

17 A. On contorted, but mostly flush.

18 Q. Okay. Prior to being flush on the vehicle, what
19 position was your body towards the vehicle; were
20 you at an angle to it?

21 A. I was pretty straight onto it.

22 Q. So both before and after you were straight on
23 towards the vehicle?

24 MR. ASPLAND: Both before and after what?

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1 MR. TORCZYNER: The witness has indicated
2 that he was flush on the hood, and previously he
3 was flush with the vehicle.

4 MR. ASPLAND: I see. I just didn't
5 understand in the way that you asked the question,
6 but if you understand what he's asking you.

7 A. I don't. If you could reword it.

8 Q. Certainly. The first time you fired your weapon
9 you were squared up to the vehicle?

10 A. To the best of my recollection, yes.

11 Q. Okay. And when you were twisted, in your words,
12 on the vehicle you were still flush on that
13 vehicle; correct?

14 A. I don't believe I was flush when I fired the
15 first two shots. I believe I was standing up
16 when I got twisted in some way. That's how I
17 became flush on the car.

18 Q. Okay. Other than your chest, was any other part
19 of your body in contact with the vehicle?

20 A. Well, my lower leg was stuck, so I would say
21 hips. I have no idea what my right leg was
22 doing, whether that was, you know, in a cavity
23 between the front end or if that was up on the
24 hood. I don't know. And my left hand was in

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1 contact with the hood trying to hold myself up.

2 Q. Did you sustain any injuries to any parts of your
3 body other than the left knee, tibia, and, what
4 you previously described, as tibial spine?

5 A. No.

6 Q. Now, that you're flush on the vehicle, do you
7 fire again?

8 A. Yes.

9 Q. How many times did you fire the second time?

10 A. I don't know.

11 Q. What were you aiming for when you fired the
12 second time?

13 A. Center mass.

14 Q. And why were you aiming for center mass?

15 A. Because I wanted to stop him.

16 Q. Was there a warning -- did you issue a verbal
17 warning before you fired the second set of shots?

18 A. Not that I can recall.

19 Q. After you fired the second set of shots --
20 withdrawn.

21 What how many shots were the second set of
22 shots?

23 A. I don't know.

24 Q. Why did you stop firing?

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1 A. I believe, my recollection is, that the engine
2 stopped revving.

3 Q. Were you still pinned between the car?

4 A. Yes.

5 Q. But you just didn't hear the engine anymore?

6 A. Correct.

7 Q. Okay. And what happened next?

8 A. I knew my gun wasn't empty because the slide was
9 not locked back, so I wanted to reload. So I
10 couldn't get to my magazine well. So I was kind
11 of messing around trying -- or magazine pouch,
12 excuse, I was trying to get to that to reload.

13 Q. Why did you want to reload your weapon?

14 A. Training. I fired several bullets. I did not
15 know how much and I didn't know the status of the
16 threat, so I wanted to reload in case I had to
17 fire some more.

18 Q. Okay. Were you able to reload your weapon?

19 A. I looked down to guide my hand to my magazine
20 pouch, and once it was almost there I looked up
21 to get eyes on Mr. Thevenin again. And at this
22 point Captain Montanino is pulling him out of the
23 car. Since that point, I believe, that portion
24 of the threat was done, I didn't bother to

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1 reload. I holstered my pistol.

2 Q. Do you recall issuing verbal instructions to
3 other officers as far as your being trapped in
4 the car?

5 A. I know I was screaming for help and things along
6 the lines of, Get it off me. So, yes, is the
7 answer.

8 Q. Okay. And where were you feeling pain at this
9 point, if anywhere?

10 A. My left lower leg and knee.

11 Q. Was your left lower leg and knee still trapped at
12 this point?

13 A. Yes.

14 Q. At this point where your left lower knee, leg and
15 knee is trapped, you're watching Sergeant
16 Montanino -- Captain Montanino take Thevenin out
17 of his vehicle?

18 A. Yes.

19 Q. Was anybody assisting in getting him out of the
20 vehicle?

21 A. Not that I saw.

22 Q. And what happened next after Captain Montanino
23 gets Thevenin out of the vehicle?

24 A. Other officers begin arriving.

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1 Q. And what do these other officers do?

2 A. I saw Officer Dean run over with
3 Captain Montanino. Then Captain Montanino gets
4 in the car to try to back it off of me. And
5 Officer Parker runs up next to me, and he's
6 talking to me, but I don't recall about what.

7 Q. Did you see any civilians at this point?

8 A. I know Phil Gross was there. I think just
9 because people told me afterwards. I don't
10 recall seeing him at this point.

11 Q. Okay. About how long after Thevenin is removed
12 from the vehicle is the vehicle then no longer
13 engaged with your leg?

14 A. I couldn't tell you. There was -- I couldn't
15 tell you.

16 Q. Did you ever lose consciousness?

17 A. No.

18 Q. So you saw Captain Montanino and someone else
19 trying to back the vehicle up. Did they
20 eventually get that vehicle disengaged from your
21 vehicle?

22 A. No.

23 Q. You were able to extricate yourself from the car?

24 A. They pushed the car enough so it created just a

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1 small gap, and I fell at that point.

2 Q. And where did you fall?

3 A. Under the car.

4 Q. Parallel to the car, or under the car?

5 A. My left leg was parallel with the front bumper
6 laying right underneath. I fell to the left and
7 fell into the roadway. My left lower leg was
8 under the car.

9 Q. Did you ever learn -- withdrawn.

10 Are you aware whether your leg or your
11 bootlace was caught on the car?

12 A. Yes.

13 Q. And when did you become aware of that?

14 A. Officers grabbed me and tried to pull me out now
15 from under the car, and they couldn't because my
16 bootlaces were wrapped on something.

17 Q. At that point when you're lying in the roadway
18 and your bootlaces are trapped on the car, is
19 that the only part of your body that's in contact
20 with that vehicle?

21 A. My right leg was like up on the bumper. It
22 wasn't stuck, but it was like on the bumper
23 between the two cars. It was just like up in the
24 air.

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- 1 Q. Are you feeling pain in your leg at this point?
- 2 A. No. It wasn't stuck; it was sitting there.
- 3 Q. And what happened next?
- 4 A. They passed a knife up and cut my bootlaces and
- 5 pulled me up.
- 6 Q. Were you able to stand at that point?
- 7 A. They picked me up and I stood, and I was able to
- 8 stand.
- 9 Q. Did you walk away from that, or were you taken on
- 10 a stretcher or something else?
- 11 A. I was assisted in walking. Two guys got under
- 12 each of my arms and pretty much carried me,
- 13 helped me walk to the back of David Dean's police
- 14 car.
- 15 Q. How far was David Dean's police car from the
- 16 Thevenin vehicle?
- 17 A. I couldn't tell you. It was close. It wasn't a
- 18 long travel.
- 19 Q. At any point, did you look at Edson Thevenin
- 20 after your bootsstraps -- withdrawn. Let's
- 21 rephrase that question.
- 22 At any point after your bootlaces were cut
- 23 away from the Thevenin vehicle did you look at
- 24 Edson Thevenin?

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1 A. No.

2 Q. At any point after you were standing up again,
3 did you look at Edson Thevenin?

4 A. No.

5 Q. At any point did you attempt to render aid to
6 Edson Thevenin?

7 A. No.

8 Q. Did you ever instruct anyone to render aid to
9 Edson Thevenin?

10 A. No.

11 Q. Did anyone ever ask you if you were shot?

12 A. No, not that I recall.

13 Q. Did you mention to anyone that you had discharged
14 your service weapon on Mr. Thevenin?

15 MR. ASPLAND: While at the scene, you're
16 saying?

17 A. No.

18 MR. ASPLAND: At the scene.

19 A. No.

20 Q. What happens next after you're assisted to the
21 Dean vehicle?

22 A. I get in the backseat. David Dean gets in the
23 driver's seat, and he drives me to Albany Medical
24 Center.

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1 Q. That's on Whitehall Street -- no, that's on New
2 Scotland Avenue?

3 A. Yes.

4 (Plaintiffs French Exhibit 4 was marked for
5 identification.)

6 Q. I'm going to show now a picture that's marked as
7 French 4. Please take a look at it, and let me
8 know when you're done.

9 A. Okay.

10 Q. Do you see your vehicle in this picture?

11 A. I do.

12 Q. Do you see the vehicle that you know to be
13 Thevenin's vehicle in this picture?

14 A. I do.

15 Q. What are the orange things behind your vehicle on
16 the ground?

17 A. They appear to be evidence markers.

18 Q. Do you know what's next to those evidence
19 markers?

20 A. No.

21 Q. Are the vehicles in the position that they were
22 in when you fired the last two shots?

23 MR. ASPLAND: Form. I don't know that we
24 have established the volley's, but that's fine.

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1 Q. I will rephrase the question.

2 You had two sets of shots that you fired;
3 right?

4 A. Yes.

5 Q. Okay. When you fired the second set of shots,
6 are these vehicles in the position that they were
7 in at that time?

8 A. To the best my recollection, yes.

9 Q. Have you ever seen this picture before?

10 A. This one, no. I don't think so.

11 Q. Were you ever shown pictures?

12 A. Yes.

13 Q. Who showed you pictures?

14 A. My counsel.

15 Q. Okay. I hate to say this, but is it the counsel
16 seated to your right, or --

17 A. Yes, the counsel seated to my right.

18 Q. Also because you have the other attorneys who --

19 A. Yes.

20 Q. Okay.

21 (Plaintiffs French Exhibit 5 was marked for
22 identification.)

23 Q. I'm going to showing you now a photo that's been
24 marked French 5. Please take a look at it, and

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1 let me know when you're done.

2 A. I am done.

3 Q. You've seen this picture before?

4 A. Yes.

5 Q. And in this picture the Thevenin's vehicle is no
6 longer closer to your vehicle; correct?

7 MR. ASPLAND: Well --

8 Q. All right. Withdrawn.

9 The Thevenin's vehicle is no longer in the
10 position that it was in when you fired the second
11 set of shots; correct?

12 A. I don't believe so.

13 Q. Do you see any damage to your vehicle?

14 A. Yes.

15 Q. Okay. Where do you see damage?

16 A. To the driver's door.

17 Q. And just to the driver's door?

18 A. With the lighting I can't tell you if there's
19 damage to anywhere in the back.

20 Q. When you were pinned in your vehicle was your
21 door that was pinning your leg to the vehicle or
22 was it the other car or some other combination
23 thereof that was pinning you to the other
24 vehicle?

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- 1 A. I believe it was just his car.
- 2 Q. At the time that his vehicle was first pinning
3 your leg to your car was any part his vehicle in
4 contact with any part your vehicle?
- 5 A. I know he hit the door because I couldn't get the
6 door open all the way, and I had to squeeze
7 myself out. Other than that, I don't know.
- 8 Q. Okay. So part of his vehicle -- when the initial
9 set of shots were fired part of his vehicle is in
10 contact with your driver door, and part of his
11 vehicle's in contact with your leg?
- 12 A. Yes.
- 13 Q. Okay. And then when the second set of shots were
14 fired is his vehicle still in contact with part
15 of your vehicle, to your recollection?
- 16 A. No.
- 17 Q. So when the second set of shots were fired his
18 vehicle is no longer touching your vehicle, but
19 it's still touching you?
- 20 A. Correct.
- 21 Q. Okay. Now, this picture -- I don't know if I
22 asked you this before, but this picture that's
23 been remarked as French 5, have you seen that one
24 before?

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- 1 A. Yes, my counsel to my right showed me.
- 2 Q. Yesterday that was Montanino 11; now it's French
- 3 5. And when you say, your counsel, you're
- 4 talking about the gentleman to your immediate
- 5 right?
- 6 A. Yes.
- 7 (Plaintiffs French Exhibit 6 was marked for
- 8 identification.)
- 9 Q. I'm going to now show you a photo that's been
- 10 marked French 6. Take a look at it, and let me
- 11 know when you're done, please.
- 12 A. I'm done.
- 13 Q. Okay. Have you ever seen this picture before?
- 14 A. No.
- 15 Q. Do you have any idea who took this picture?
- 16 A. No.
- 17 Q. Do you see what appears to be gunshots in this
- 18 picture?
- 19 A. Yes.
- 20 Q. When I say "gunshots," it's actually bullet
- 21 holes; correct?
- 22 A. Yes.
- 23 Q. How many bullet holes do you see in this picture?
- 24 A. Six -- I'm sorry. Eight, six and two.

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1 Q. How many bullets does your service weapon hold?

2 A. Nine.

3 Q. Do you know why on the second set of shots you
4 stopped firing?

5 MR. ASPLAND: Asked and answered. You can
6 answer again.

7 A. I felt that the car -- and heard the car was no
8 longer revved up.

9 Q. Do you, looking at this picture, have any belief
10 as far as which of the shots that are in this
11 picture were from the second set and which were
12 from the first?

13 MR. ASPLAND: I'm confused by that one.

14 Q. Okay. You mentioned that there were two sets of
15 shots that you fired; right?

16 A. Yes.

17 Q. Looking at this picture can you identify which
18 shots were from the first set of shots, and which
19 were from the second?

20 A. I would say the two to the right would be the
21 first volley, and the remaining six would be from
22 the second volley.

23 Q. Okay. Put that on the stack, please. Can you
24 just put them all together. I'm going to give

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1 you another set to look at in a moment.

2 This one's with apologies to John, this I
3 only have black and white. I don't know why the
4 production came that way, but the next set is
5 going to be -- the only one I have is black and
6 white.

7 MR. TORCZYNER: Let's mark this as the next
8 one, please?

9 (Plaintiffs' French Exhibit 7 was marked
10 for identification.)

11 Q. All right. I show you now a picture that's black
12 and white and marked French 7. Please take a
13 look at it, and let me know when you're done.

14 A. I'm done.

15 Q. Have you seen this picture before?

16 A. No.

17 Q. Okay. There are rods that are in this picture;
18 correct?

19 A. Yes.

20 Q. Have you ever seen these kinds of rods before?

21 A. Yes.

22 Q. These are used to track the trajectory of a
23 bullet that's fired; correct?

24 A. Yes.

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1 Q. Having seen this picture, does that change your
2 belief as far as which shots were from the first
3 set of shots and which were from the second?

4 A. No.

5 Q. Why don't you put that on the stack as well,
6 please. Thank you.

7 MR. ASPLAND: Off the record.

8 (An off-the-record discussion was held.)

9 BY MR. TORCZYNER:

10 Q. At the -- when you were exiting your vehicle,
11 before the first set of shots were fired at the
12 point that you're getting out of the vehicle, was
13 the Thevenin vehicle already in contact with your
14 car?

15 A. He was in contact with the door, yes.

16 Q. Thevenin's vehicle was in contact with the door
17 of your car at that point; correct?

18 A. Sorry. The answer is yes.

19 Q. Before your leg was pinned did you attempt to
20 close the door?

21 A. No.

22 Q. If Thevenin's vehicle was in contact with your
23 vehicle, with the door of your vehicle, at that
24 point why didn't you try to close the door?

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1 A. Do you mean to close the door to stay inside?

2 Q. Yes.

3 A. I believed at that point that it was just -- I
4 parked too close. I didn't think I parked too
5 close. I didn't foresee getting crushed. I just
6 thought I had to squeeze out and get out of the
7 car.

8 Q. Did you hear an impact of Thevenin's vehicle
9 making contact with the door of your car?

10 A. No.

11 Q. Have you ever had any contact with members of
12 Edson Thevenin's family?

13 A. Not that I know of.

14 Q. After this incident have you spoken with the
15 mayor about what occurred that night?

16 A. No.

17 Q. You had mentioned talking to the district
18 attorney. Did you tell the district attorney
19 your version of what occurred that night?

20 A. Yes.

21 Q. And that was part of the grand jury prep?

22 A. Yes.

23 Q. Did you ever speak to any member of the media
24 about the events that took place that night?

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- 1 A. No.
- 2 Q. Has the media attempted to contact you?
- 3 A. No.
- 4 Q. Could you tell whether Thevenin was bleeding when
- 5 you fired the second set of shots?
- 6 A. No.
- 7 Q. Did you see any bullet holes on Thevenin before
- 8 you fired the second set of shots?
- 9 A. No.
- 10 Q. Approximately how much time transpired between
- 11 when you fired the first set of shots and when
- 12 you fired the second set of shots, if you know?
- 13 A. I can't tell you.
- 14 Q. Was your car in park before you attempted to get
- 15 out of your vehicle?
- 16 A. Yes.
- 17 Q. When you were pinned between the vehicles did you
- 18 attempt to put your vehicle in gear?
- 19 A. No.
- 20 Q. Did you attempt to push Thevenin's car off of you
- 21 with your own hands?
- 22 A. I may have.
- 23 Q. Did you make any kind of radio call while the
- 24 Thevenin vehicle was first in contact with you

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1 before you fired the first shots?

2 A. No.

3 Q. Did you see Sergeant Montanino before you fired
4 the first set of shots?

5 A. Yes.

6 Q. What was Sergeant Montanino doing before you
7 fired the first set of shots?

8 A. He was standing along the driver's side of the
9 vehicle.

10 Q. The driver's side of which vehicle?

11 A. Thevenin's vehicle.

12 Q. Did you tell -- withdrawn.

13 Did you verbally notify Sergeant Montanino
14 that you were trapped between the vehicles before
15 you fired the first set of shots?

16 A. I don't know.

17 Q. Was Captain Montanino saying anything to you at
18 this point prior to your firing the first set of
19 shots?

20 A. I don't know.

21 Q. You had mentioned that when you fired the second
22 set of shots you were aiming for center mass. Do
23 you remember giving that answer?

24 A. Yes.

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1 Q. During the first set of shots were you also
2 aiming for center mass?

3 A. Yes.

4 Q. Did Thevenin speak at any point while you were
5 firing?

6 A. Not that I heard.

7 Q. Did Thevenin speak at any point before you fired
8 the second set of shots?

9 A. Not that I heard.

10 MR. TORCZYNER: I need a couple of
11 minutes.

12 (A recess was taken.)

13 (Plaintiffs' French Exhibit 8 was marked for
14 identification.)

15 BY MR. TORCZYNER:

16 Q. I'm going to show you now a video, which for our
17 purposes, we're going to designate as French
18 Exhibit 8. It's not physically going to be
19 marked because obviously it's part of a laptop,
20 but by agreement of counsel it's the video that's
21 characterized IMG 0576. I've made it as large as
22 the screen will allow for.

23 Please take a look at it.

24 (Video is being played.)

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1 Q. Were you able to hear the audio at that point?

2 A. The audio of the video?

3 Q. The audio of this video --

4 A. Yes.

5 Q. -- were you able to hear it?

6 A. Yes.

7 Q. Were you able to hear your voice?

8 A. I was.

9 Q. Okay. And in this video you're saying, Get it
10 off me; correct?

11 A. That's what it sounds.

12 Q. Let's continue this. Three seconds into the that
13 video we had stopped it.

14 (Video is being played.)

15 Q. Again, it's your voice saying, Get it off me, and
16 music playing in the background for reasons none
17 of us can explain. And, again, it's shot from
18 the other side of the cement elephants; correct?

19 A. Yes.

20 (Video is being played.)

21 Q. Now, we're viewing someone's pocket or the
22 interior of the vehicle. Now, there's a blank
23 screen. We're 40 seconds in. At the one-minute
24 mark it's still a blank screen.

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1 Okay. At about 110, you heard, Get him off.
2 Did you hear that? Do you need me to rewind it?
3 A. Again, I heard what you said, yes. I don't know
4 whose voice it was.
5 Q. That's the question I was going to ask you.
6 A. Go ahead, play it again. I'll try to get it.
7 Q. Okay. I'm rewinding to 108.
8 (Video is being played.)
9 Q. Do you recognize, Get him off, Get him off?
10 A. I can't say for sure who that was.
11 (Video is being played.)
12 Q. Okay. You heard that, I'm all right. Do you
13 know who's speaking in that?
14 A. Can you play it again?
15 Q. Sure. We're at 129. I'm going to replay it at
16 124.
17 (Video is being played.)
18 A. I think I heard, He's good.
19 Q. Do you know who the speaker is?
20 A. No. Can you do it one more time, please?
21 Q. Certainly. All right. We're going to go back
22 again to 124. And again the screen is blank as
23 it's been since approximately 30 seconds into the
24 video.

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1 (Video is being played.)

2 A. No, I can't tell you. I don't know.

3 Q. There's, He's a good, and then it sounds like,
4 I'm all right; correct?

5 A. I didn't hear that. I just heard, He's good.

I'm didn't hear the, I'm all right. I heard
someone say. I'm over there.

8 O. Maybe, I'm over there, is the response.

9 (Video is being played.)

10 Q. Now, there's suddenly a picture again, just
11 psychedelic lights, and then the video ended

12 This was the video that you first watched
13 with John yesterday?

14 A Yes

15 Q. I'll be referring to your counsel by their names
16 just so we don't have confusion anymore.

17 At the moment that you first pulled your
18 vehicle in front of Mr. Thevenin's vehicle and
19 before you attempted to exit your vehicle, did
20 you make any form of instruction to Mr. Thevenin
21 using the microphone or PA from your car?

22 A. No.

23 Q. Do you hear Captain Montanino making form of
24 instruction?

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1 A. No. I'm not saying he didn't. I just don't
2 remember hearing it.

3 Q. Approximately how far was your vehicle parked
4 from Thevenin's vehicle when you first stopped
5 your vehicle?

6 A. Couple feet.

7 Q. Less than five?

8 A. Yes.

9 Q. Are you instructed that you are to wait for
10 additional backup before attempting to get out of
11 your vehicle in a situation where there's been a
12 pursuit?

13 A. No.

14 Q. Were there specific instructions for how to deal
15 with a fleeing vehicle which -- withdrawn.

16 (Plaintiffs French Exhibit 9 was marked for
17 identification.)

18 Q. I'm going to show you now a document that's been
19 marked French 9. Take a look at it. Please let
20 me know when you're done.

21 A. Okay.

22 Q. It's captioned, "General Order Number 711, motor
23 vehicle pursuit policy with an effective date,
24 July 22nd, 2015." Have you seen this version of

RANDALL FRENCH - 07/28/17

1 the policy before?

2 A. I'm sure I have.

3 Q. Okay. Looking at this policy, can you turn to
4 page 3 of 6. Can you please read out loud B
5 under pursuit tactics.

6 A. "Roadblocks," slash, "ramming suspects.

7 Roadblocking or ramming is considered a use of
8 deadly physical force, as such all policies
9 governing such use-of-force must be applied in
10 these situations. They shall be allowed only in
11 extraordinary situations and upon a supervisory
12 directive."

13 Q. "And only upon a supervisory directive"; correct?

14 A. Correct.

15 Q. Did you consider what were you doing with your
16 vehicle to be a roadblock?

17 A. No.

18 Q. Okay. What would be the difference between a
19 roadblock and your blocking his vehicle with
20 yours?

21 A. His vehicle was already stopped when I placed
22 mine as opposed to a roadblock is closing off the
23 roadway with a vehicle still in motion coming at
24 it.

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- 1 Q. Is there anything within this motor vehicle
2 pursuit policy which discusses using your vehicle
3 to block his vehicle?
- 4 A. No.
- 5 Q. Okay. Turn to page 132. It's 5 of 6 on the
6 bottom right. Thank you.
- 7 A. I'm sorry. Where -- 132 and where?
- 8 Q. I haven't told you yet. I just want you to turn
9 to the page.
- 10 A. Okay. I'm here.
- 11 Q. Okay. Do you see across the top there's a Roman
12 numeral 7 post pursuit reporting?
- 13 A. Yes.
- 14 Q. Okay. Under -- can you read Section 1, please.
- 15 A. "Initiating officer post pursuit report and, if
16 needed, a supplemental Report."
- 17 Q. Have you ever filled out a Post Pursuit Report?
- 18 A. No.
- 19 Q. Have you seen a Post Pursuit Report?
- 20 A. For this incident?
- 21 Q. No, period.
- 22 A. Yes.
- 23 Q. Did you ever attempt to fill out a Post Pursuit
24 Report?

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1 A. No.

2 Q. And why not?

3 A. I haven't returned to work, and I have not been
4 asked.

5 Q. Okay. You had discussed previously a report or
6 series of reports that you had started preparing
7 on your home computer. Do you remember
8 discussing those?

9 A. I do.

10 Q. Did you attempt to fill out a Post Pursuit
11 Report?

12 A. No.

13 Q. And why not?

14 A. I was not asked. I just haven't.

15 Q. Okay. But the resistance report, you also hadn't
16 been asked to fill out; correct?

17 A. Correct.

18 Q. So why did you elect to start a Response to
19 Resistance Report and not a Post Pursuit Report?

20 A. I honestly forgot to do it, that it needed to be
21 done.

22 Q. Let's put that on the stack, please.

23 I'm going to show now a document that we're
24 going to mark as 10.

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1 (Plaintiffs' French Exhibit 10 was marked
2 for identification.)

3 Q. I'm going to show now a document that's been
4 marked French 10. Please take a look at it. Let
5 me know when you're done.

6 A. I am ready.

7 Q. Okay. This is General Order 0806, subject
8 vehicle and traffic stops. Do you see that?

9 A. I do.

10 Q. Have you reviewed this before?

11 A. Yes.

12 Q. Is there anywhere in this document that discusses
13 attempting to remove the keys from an operating
14 vehicle in order to prevent that vehicle from
15 leaving the scene?

16 A. No.

17 Q. Okay. Let's go back to page 57, please.

18 Within the Subsection D, stopping or known
19 or suspected felon. Do you see that?

20 A. I do.

21 Q. Let's go please to the follow page. Can you read
22 out loud 8, please.

23 A. "At night the officer shall focus all lights on
24 the interior of the suspect vehicle."

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1 Q. When you stopped your vehicle at an angle to the
2 cement barricade or cement divider on the roadway
3 were your lights focused on the interior of Mr.
4 Thevenin's vehicle?

5 A. No.

6 Q. Can you read out loud 10, please. I know it's a
7 long paragraph.

8 A. "The officer making the stop is in command and
9 will direct each occupant using the public
10 address system to get out of the vehicle and into
11 the appropriate search position. First, once
12 suspects are stopped the officer shall order the
13 driver to shut off the motor and drop the keys on
14 the ground outside his door. Next, the officer
15 shall order occupants to place their hands, palms
16 up, on the ceiling of the vehicle. Officer shall
17 then order occupants to exit the vehicle on the
18 driver's side only one at a time. Occupants will
19 then be ordered to walk backwards with their
20 hands on their head towards the sound of the
21 officer's voice."

22 Q. Did you use the public address system after you
23 pulled your car at an angle to the cement
24 barrier?

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1 A. No.

2 Q. Is there a reason you did not ask Mr. Thevenin to
3 shut off the motor and drop the keys on the
4 ground?

5 A. This policy does not apply to that situation.

6 Q. Okay. And why does this policy not apply to that
7 situation?

8 A. This policy has to do with when you're stopping
9 a, what we call a "high risk traffic stop,"
10 somebody who's believed to be wanted or armed
11 inside. It's not usually used post to pursuit
12 where the vehicle is crashed and can potentially
13 go on again.

14 Q. Is there a particular policy that you're aware of
15 that's published by the Troy Police Department
16 that deals with the scenario you just described?

17 A. No.

18 Q. I'm going to show you one more policy, please.
19 (Plaintiffs' French Exhibit 11 was marked
20 for identification.)

21 Q. I'm going to show you now a document that's
22 marked General Order Number 0602, deadly physical
23 force, and it's dated effective April 11th of
24 2016, which is only six days prior to this

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1 incident.

2 Had you reviewed this version of General
3 Order 0602 prior to the events that took place on
4 April 17th, 2016?

5 A. I believe so.

6 Q. Do you recall reviewing the April 11th version
7 within less than a week of the events that took
8 place?

9 A. When changes are made they get emailed to us, and
10 when I get it I review it. And if this -- I
11 imagine this would have been emailed out before
12 that. So I can't say a hundred percent, but I
13 believe I probably would have.

14 Q. Do you have a present recollection of reviewing
15 this policy?

16 A. No.

17 Q. I'm going ask a more difficult question: But do
18 you recall whether this policy has any deviations
19 or variations from the prior policy?

20 A. I can't say.

21 Q. This indicates that the last revision was 2016.
22 So on the face of the document, and I'm not
23 testifying, apparently this is different than the
24 prior version. I'm just going to ask you to

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1 leave for a moment so I can talk to counsel.

2 (An off-the-record discussion was held.)

3 BY MR. TORCZYNER:

4 Q. If you can, please take a look at the policy,
5 which is General Order Number 0602, and let me
6 know when you're ready, please.

7 A. Ready.

8 Q. Can you please read out loud Sub C on page 2 of
9 8.

10 A. "Moving vehicles. Discharging a firearm at a
11 moving vehicle is prohibited unless the officer
12 reasonably believes that the occupants of the
13 vehicle is using or about to use deadly physical
14 force against the officer or another person, and
15 other available options have been exhausted.

16 Officers should note that a motor vehicle
17 presents formidable shield against most firearms
18 and if the officer disables the operator, the
19 vehicle can be expected to continue uncontrolled
20 creating a hazard to officers and the public.

21 Q. Prior to firing your service weapon, did you use
22 any other available option in order to disengage
23 from that vehicle?

24 A. I used pepper spray.

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1 Q. Okay. The pepper spray was used when you were a
2 number of blocks away; correct?

3 A. Yes.

4 Q. So when you were engaged with the vehicle to the
5 point where it was making contact with your body,
6 did you attempt to use any other option prior to
7 using your service weapon?

8 A. No.

9 Q. Did you have the microphone that you were
10 discussing before, was that on your person at the
11 time that you were pinned between the vehicles?

12 A. Yes.

13 Q. Did you engage that while you were -- before you
14 used the service weapon?

15 A. No.

16 Q. That microphone that was -- or what would you
17 call it, the thing that was on your --

18 A. Shoulder mic.

19 Q. Did that shoulder mic have the ability to
20 activate the PA system in your car?

21 A. No.

22 Q. While you were standing where you were did you
23 have the ability to activate the PA system in
24 your car?

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1 A. No.

2 MR. TORCZYNER: We can put this on the side.

3 I discussed with counsel the possibility that
4 this is a different version than the one that may
5 have been reviewed by you prior. So I'm going to
6 make a request on the record and follow it up in
7 writing, for the version of General Order 0602,
8 which predicated April 11th, 2016. And after
9 reviewing it, we'll make a decision whether any
10 further inquiry on that subject is required.

11 MR. ASPLAND: Fair enough.

12 DOCUMENT/INFORMATION REQUESTED:

13 Q. When did you have the MRI that you mentioned of
14 your leg that revealed that there was a tibial
15 fracture of the spine, as you described it, or a
16 fracture of the tibial spine?

17 A. It was more than a couple of weeks. I can't give
18 you an exact date.

19 Q. Was your leg casted after the incident?

20 A. It was put in a brace.

21 Q. Okay. Was that a removable brace?

22 A. Yes.

23 Q. Did you have any kind of surgery on any part of
24 your body after the incident?

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1 A. No.

2 Q. Which doctor treated you after the incident? If
3 there was more than one, then more than one.

4 A. It was through the OrthoNY practice.

5 Q. Is that a regular practice that you visited
6 previously?

7 A. Yes.

8 Q. And where's that practice located?

9 A. They have numerous locations, but the one I went
10 to was on Everett Road in Albany.

11 Q. Did you have more than one physician that you saw
12 there, or one specific physician?

13 A. I saw a physician's assistant and I saw a
14 physician, and off the top of my head I cannot
15 recall his name.

16 Q. I don't know if I asked this question already:
17 Did you have surgery after the incident?

18 A. No.

19 Q. Did you have physical therapy after the incident?

20 A. No.

21 Q. And where was the physical therapy taken?

22 A. Columbia Physical Therapy in East Greenbush.

23 Q. Other than seeing the OrthoNY practice and the
24 Columbia Physical Therapy practice, did you see

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- 1 any other healthcare professionals relating to
2 the incident that took place on April 17th, 2016?
- 3 A. Yes.
- 4 Q. Who else did you see?
- 5 A. I do not recall his name. It was required
6 through Benetech, who is our Workers' Comp
7 program. It is an independent medical evaluation
8 of my injury.
- 9 Q. How many times did you go for an independent
10 medical evaluation?
- 11 A. Once.
- 12 Q. About how long after the incident did you go?
- 13 A. Couple months.
- 14 Q. And at that point did the IME doctor tell you
15 that you've reached maximum medical improvement?
- 16 A. No.
- 17 Q. What did the IME doctor say?
- 18 A. He said it would take six months to a year to
19 fully heal.
- 20 Q. Okay. Were you ever pronounced fit to return to
21 duty from a medical perspective?
- 22 A. No.
- 23 Q. Were you ever --
- 24 A. I'm sorry. By OrthoNY, yes. By a city doctor,

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1 no.

2 Q. Okay. When did OrthoNY tell you that you were
3 fit to return to duty?

4 A. Mid-July 2016.

5 Q. Was that before or after the IME doctor?

6 A. I can't say. I don't remember what came first.

7 Q. Do you remember telling the IME doctor, But wait,
8 OrthoNY said that I could go back to work?

9 A. No.

10 Q. Did you ever have any communications with
11 Captain Montanino after the events of April 17th,
12 2016?

13 A. Yes.

14 Q. When was the last time you spoke with him?

15 A. I saw him at a wedding of Officer Parker a couple
16 of weeks ago.

17 Q. Okay. Did you discuss the events that took place
18 on April 17th, 2016, with Captain Montanino when
19 you saw him at that wedding?

20 A. No.

21 Q. Have you discussed the events that took place on
22 April 17th, 2016, with Captain Montanino
23 subsequent to April 17th, 2016?

24 A. No.

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1 Q. The physical therapy that you underwent, was that
2 for your leg?

3 A. Yes.

4 Q. For your left leg?

5 A. Yes.

6 Q. Were you ever told of the diagnosis of anything
7 -- any injuries sustained by your left leg other
8 than the tibial spine fracture that you discussed
9 with us earlier?

10 A. Yes, and the bruising of the tibial bone.

11 Q. Do you know how they determined that the tibial
12 broken was bruised?

13 A. MRI.

14 Q. Did you have more than one MRI, or only one?

15 A. One.

16 Q. After the incident you were taken to the hospital
17 that you mentioned on New Scotland Avenue?

18 A. Yes.

19 Q. How long did it take you to get there?

20 A. Less than ten minutes.

21 Q. Were you immediately -- withdrawn.

22 Were you admitted to the hospital, or were
23 you treated and released?

24 A. Treated and released.

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1 Q. How long were you in the hospital?

2 A. Couple of hours.

3 Q. And what instructions did they give when you were
4 released from the hospital?

5 A. They put an immobilizer on my leg, gave me pain
6 medications, and told me to follow-up with an
7 orthopedic, and crutches.

8 Q. Did they tell you when you were in the hospital
9 what injury they diagnosed you with, if any?

10 A. No.

11 Q. They just told you that this is what we instruct
12 you to do going forward and who you need to
13 consult with?

14 A. Yes.

15 Q. Did anyone ever tell you when you were in the
16 hospital that any bone in your body had been
17 broken?

18 A. No.

19 Q. When you were released from the hospital, for
20 what period of time did have that boot on your
21 left foot?

22 A. It wasn't a boot; it was a knee immobilizer.

23 Q. Okay. For what period of time was the knee
24 immobilizer on your left leg?

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1 A. On the one they gave me?

2 Q. Yes.

3 A. It was on until the next day. When I went to
4 OrthoNY and they gave me another, that was on for
5 two to three weeks.

6 Q. When you were wearing that immobilizer on your
7 left leg, were you using crutches?

8 A. Yes, and then I switched to a cane.

9 Q. And for what period of time did you use crutches
10 and/or a cane?

11 A. Couple weeks, maybe three.

12 Q. The clothing that you wearing on the day of the
13 incident, on April 17th, 2016, was all of that
14 vouchered as evidence, or were you allowed to
15 keep any of it?

16 A. Everything except my underwear was taken.

17 MR. TORCZYNER: Off the record.

18 (An off-the-record discussion was held.)

19 BY MR. TORCZYNER:

20 Q. When was the last time that you spoke with
21 Detective Sergeant White?

22 A. Several months ago.

23 Q. Okay. Now, you previously testified that
24 Detective Sergeant White had told you that --

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1 withdrawn.

2 You had previously testified that someone
3 had told you that you had been cleared by the
4 departmental investigation.

5 Do you remember giving that answer?

6 A. Yes.

7 Q. Was that Detective Sergeant White who told you
8 that?

9 A. I do not remember who told me that.

10 MR. TORCZYNER: We're just going to leave a
11 gap in the transcript. If at some point when you
12 get the transcript back you can provide us with
13 the information on who informed you of that, that
14 would be great.

15 DOCUMENT/INFORMATION REQUESTED:

16 MR. TORCZYNER: At this point, subject to the
17 general order that we're still waiting on, I think we can
18 close the deposition. I thank you for coming today.

19 MR. ASPLAND: Thank you.

20 (Whereupon, the examination of
21 RANDALL FRENCH, in the above-entitled
22 matter was concluded at 2:31 p.m.)

23

24

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1 STATE OF NEW YORK)
2 COUNTY OF ss:
3)

4 I, RANDALL FRENCH, have read the foregoing record
5 of my testimony taken at the time and place noted in the
6 heading hereof, and I do hereby acknowledge it to be a
7 true and accurate transcript of same.

8
9

10
11

12



13 RANDALL FRENCH

14
15

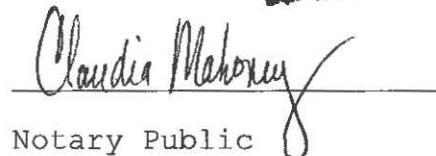
16

17 DATED: 10/11/17

18

19 Sworn to before me this _____
20 day of Oct State of New York, County of Poughkeepsie
Claudia Mahoney
Commissioner of Clerks
Exp. 4/26/19

21
22



23 Notary Public

24

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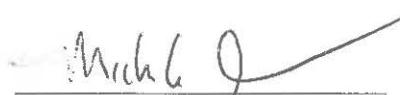
1 C E R T I F I C A T I O N
2
3

4 I, MICHELE AMBROSINO, a Shorthand Reporter and
5 Notary Public within and for the State of New York, do
6 hereby CERTIFY that prior to being examined, the witness
7 named in the foregoing deposition was duly sworn to
8 testify the truth, the whole truth and nothing but the
9 truth.

10 That said deposition was taken down by me in
11 shorthand at the time and place therein named and
12 thereafter reduced by me to typewritten form and that the
13 same is a true, correct and complete transcription of
14 said proceedings.

15 Before completion of the deposition, review of the
16 transcript was requested. If requested, any changes
17 made by the deponent (and provided to the reporter)
18 during the period allowed are appended hereto.

19 I further certify that I am not interested in the
20 outcome of this matter.

21
22
23 
24

MICHELE AMBROSINO
Court Reporter

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File #: 11166-0001

Title: Cinthia Thevenin, et al. v. City of Troy, et al.

Examination Before Trial of: Randall French

TRANSCRIPT CORRECTION SHEET

Page Line Correction and Reason for Correction:

8 11 "code enforcement" not "co-enforcement"

14 23 "General topics" not "natural topics"

23 21 "Filled on overtime" not "Filled at the time"

35 12 "Training and" not "Trainings of"

47 8 "Comitale" not "komitale"



Signature of Deponent

Sworn to before me this County of Rensselaer
day of October, 2017.
Claudia Mahoney, Commissioner of Deeds
Claudia Mahoney
Notary Public – State of New York

FITZGERALD MORRIS BAKER FIRTH P.C.

File #: 11166-0001

Title: Cinthia Thevenin, et al. v. City of Troy, et al.

Examination Before Trial of: Randall French

TRANSCRIPT CORRECTION SHEET

Page Line Correction and Reason for Correction:

71 24 "Maloy" not "McAvoy"

83 1 "It turned" not "I turned"

99 20 Kehn "K-E-H-N" not Kehm K-E-H-M

105 16 "kehn" not "Kehm"

105 14 "Kehn" not "Kehm"


Signature of Deponent

State of New York, County of Rensselaer
Sworn to before me this 11 day of Oct Commissioner of October 2017
Exp. 4/16/19

Claudia Mahoney
Notary Public – State of New York

FITZGERALD MORRIS BAKER FIRTH P.C.

File #: 11166-0001

Title: Cinthia Thevenin, et al. v. City of Troy, et al.

Examination Before Trial of: Randall French

TRANSCRIPT CORRECTION SHEET

Page

Line

Correction and Reason for Correction:

125 8

"Lick" not "curve"

135 15

"Tests" not "test"

136 12

"Demonstration and" not "deposition or"

141 14

"Ridged" not "rigid" not "rigged"

143 23

"pepper" not "peppered"


Signature of Deponent

State of New York, County of Rensselaer
Sworn to before me this _____ day of Oct. _____
Commissioner of Deeds
Exp. 4/1/19

Claudia Mahoney
Notary Public - State of New York

FITZGERALD MORRIS BAKER FIRTH P.C.

File #: 11166-0001

Title: Cinthia Thevenin, et al. v. City of Troy, et al.

Examination Before Trial of: Randall French

TRANSCRIPT CORRECTION SHEET

Page

Line

Correction and Reason for Correction:

144 10

"Mucous membrane" not "UCAS"

147 3

"Pepper" not "peppered"

152 21/22

"Don't recall anyone coming westbound"
not "do recall him coming westbound"

157 12

"I didn't" not "I did"

190 6

"I didn't" not "I'm didn't"



Signature of Deponent

State of New York, County of Rensselaer
Sworn to before me this
day of Oct. 10, 2017,
Commissioner of Deeds
Exp. 4/10/18.

Claudia Mahoney
Notary Public – State of New York

FITZGERALD MORRIS BAKER FIRTH P.C.

File #: 11166-0001

Title: Cinthia Thevenin, et al. v. City of Troy, et al.

Examination Before Trial of: Randall French

TRANSCRIPT CORRECTION SHEET

Page

Line

Correction and Reason for Correction:

191

1

Captain Montanino was standing near Thevenin's door yelling. I don't recall what he said. I originally said no thinking I was being asked if Capt. Montanino used his PA.

202

20

Answer was clearly yes as can be determined by the next question


Signature of Deponent

Sworn to before me this _____ day of _____
day of Oct., 2019

State of New York, County of Rensselaer
Claudia Mahoney
Commissioner of Deeds
Exp. 4/26/2019

Claudia Mahoney
Notary Public - State of New York

FITZGERALD MORRIS BAKER FIRTH P.C.

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF NEW YORK

3 CINTHIA THEVENIN, Individually, and as wife of
4 EDSON THEVENIN, Decedent, and as Administratrix of
the Estate of EDSON THEVENIN, and as mother and
natural guardian of Infant N.T. and as mother and
natural guardian of Infant Z.T.,

6 Plaintiffs,

7 Index No.
-against- 16-CV-1115 (NAM/DJS)

8

9 THE CITY OF TROY and SERGEANT RANDALL FRENCH,

10 Defendants.

11 -----

12 VOLUME II

13 STENOGRAPHIC MINUTES OF CONTINUED DEPOSITION of
14 Defendant RANDALL FRENCH, pursuant to Agreement,
15 conducted on July 13, 2018, at the law offices of
16 FitzGerald Morris Baker Firth, 16 Pearl Street, Glens
17 Falls, New York, commencing at 11:34 a.m.; before
18 ELLEN J. FRANKOVITCH, a Shorthand Reporter and Notary
19 Public within and for the State of New York.

20

21



22 ORIGINAL

23

24

1 APPEARANCES:

2 ON BEHALF OF PLAINTIFF:

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7

8 ON BEHALF OF DEFENDANT:

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11 518.745.1400

12 BY: JOHN D. ASPLAND, JR., ESQ.
jda@fmbf-law.com

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STIPULATIONS

It is hereby stipulated and agreed by
and between the attorneys for the respective
parties hereto that the signing and filing of
the Notary's Oath be waived; that the
examination be conducted before Ellen J.
Frankovitch, a Shorthand Reporter and Notary
Public in and for the State of New York; that
the filing of the transcript of testimony in
the Office of the Clerk of the Court be
waived; that all objections to questions,
except as to the form thereof, are
specifically reserved to the time of trial;
That a copy of this examination shall be
furnished to the attorney for the witness
being examined without charge; and that the
transcript of testimony will be signed before
any Notary Public or other officer authorized
to administer oath.

1 RANDALL FRENCH,
2 (first duly sworn by the Notary Public,
3 was examined and testified further as
4 follows:)

5 FURTHER EXAMINATION

6 BY MR. TORCZYNER:

7 Q. Good morning.

8 A. Good morning.

9 Q. My name is Neil Torczyner. I am an attorney with
10 the firm of Harfenist Kraut & Perlstein. We
11 represent the plaintiffs in this matter.12 I'm going to be asking you a series of
13 questions. It's important that you keep your voice
14 up so that the young lady seated to your left can
15 take down your answers accurately.16 You've already had a deposition before. Do
17 you recall that?

18 A. I do.

19 Q. So the same rules apply as from the prior
20 deposition. If at any point you need a break, let
21 me know. If at any point you have a question that
22 you need to go over with your counsel, the
23 gentleman seated to your immediate right, feel free
24 to do so.

1 If the question is an issue that impacts on
2 privilege, then you can let Mr. Aspland know that
3 and we'll discuss that before you give an answer.
4 Otherwise, you will need to give the answer before
5 we move on.

6 If at any point Mr. Aspland objects and
7 instructs you not to answer the question, it's
8 important that you follow Mr. Aspland's
9 instructions.

10 That is basically the same instructions we
11 gave you the last time.

12 Are you under the influence of anything that
13 would prevent you from understanding the questions
14 I'm asking you and giving answers to those
15 questions?

16 A. No.

17 Q. Do you recall testifying previously in this matter?

18 A. Yes.

19 Q. That was on or about the 28th of July, almost about
20 a year ago?

21 A. Yes.

22 Q. Did you review any documents before you came here
23 to testify today in order to prepare for your
24 deposition?

1 A. No.

2 Q. Did you listen to any audio or watch any videos in
3 order to prepare to testify today?

4 A. No.

5 Q. Other than conversations with Mr. Aspland and
6 anyone who works for Mr. Aspland, did you speak
7 with anyone to prepare for depositions today?

8 A. No.

9 Q. Are you currently employed?

10 A. Yes.

11 Q. Who are you employed by?

12 A. City of Troy Police Department.

13 Q. Are you now on active duty?

14 A. Yes.

15 Q. When did you return to active duty?

16 A. Around September 21st of 2017.

17 Q. It was about six weeks or so after we had your last
18 deposition?

19 A. Yes, about.

20 Q. What is your current title?

21 A. I'm a sergeant assigned to the detective bureau.

22 Q. Previously when we spoke, you were a sergeant but
23 you were assigned to a different bureau; correct?

24 A. In my last deposition, my bid spot in -- I was

1 working in, I was still a sergeant in the detective
2 bureau.

3 Q. And you've obviously been medically cleared to
4 return to work; correct?

5 A. Yes.

6 Q. I'm going to be asking you some questions in
7 relation partially to documents that have come from
8 various sources after your last deposition. And we
9 actually have a copy of your transcript on the
10 table, just so that you can refresh your
11 recollection as far as what you had testified to
12 before, because we're just trying to pick up and
13 fill in some gaps from the last time that you were
14 here.

15 Do you recall that I had asked you some
16 questions as it related to your employment with
17 North Greenbush Ambulance Association?

18 A. Yes.

19 Q. I am going to ask you to take a look at this
20 booklet, which is your deposition, along with the
21 errata sheet if it should impact on the pages.

22 This is your signature here on the errata
23 sheet; right?

24 A. Yes.

1 Q. I am going to ask you to turn to pages 61 to 64 in
2 your deposition. If you'd turn to page -- why
3 don't you read them to yourself and I'll ask you
4 the questions.

5 A. (Complies with request.) Okay.

6 Q. Do you recall when I asked you about your shift for
7 North Greenbush on April 16th, you were certain
8 that you had finished at 6:00 p.m., but you weren't
9 certain approximately what time you had started?

10 A. Correct.

11 Q. Okay. So we've been in touch with North Greenbush,
12 and we're going to mark as 12 a couple of pages of
13 the North Greenbush Ambulance Association records.
14 If you have seen them before, great. If not, maybe
15 you'll let us know that you've never seen them
16 before.

17 Here's a copy for you, along with a cover
18 letter from before.

19 (French Exhibit 12 was marked for
20 identification.)

21 BY MR. TORCZYNER:

22 Q. I'm showing a few pages from the North Greenbush
23 Ambulance Association records.

24 A. Okay.

1 Q. Do you see on the second page -- withdrawn.

2 Have you ever any of these pages before?

3 A. I've never seen pages 1 and 2. The page 3, the
4 center calendar, whether I actually ever looked at
5 this date, I don't know if this is our scheduling
6 calendar that we use on a regular basis.

7 Q. All right. So pages 1 and 2, you haven't seen at
8 all?

9 A. No.

10 Q. So let's skip 1 and 2, because other than it saying
11 that you worked 10.25 hours straight, you've never
12 seen that, so you wouldn't know anything about it.

13 Let's look at page 3, which is the April 2016
14 center calendar, as you called it. Do you see the
15 entry for April 16 towards the bottom of the page?

16 A. I do.

17 Q. It also has that entry of 10.25.

18 Do you know what that 10.25 means?

19 A. That would be how many hours I worked on that
20 shift.

21 Q. So it indicates from 0745 until 1800 hours.

22 Do you see that?

23 A. I do.

24 Q. To your recollection, is that accurate, that you

1 worked approximately from a quarter to 8:00 in the
2 morning until about 6:00 p.m.?

3 A. Yes.

4 Q. Do you recall whether you worked a police shift
5 prior to starting at 7:45 on the 16th?

6 A. Yes, I do.

7 Q. When did that shift end?

8 A. 7:30.

9 Q. Now, after your shift ended with North Greenbush --
10 and then after that you testified that you went
11 home before reporting back to the police station
12 for your shift in the overnight into the 17th?

13 A. Yes.

14 Q. I had asked you questions during your prior
15 deposition about previous arrests that you had made
16 that evening.

17 Do you recall that?

18 A. Yes.

19 Q. If you want to take a look at your deposition
20 pages 77 to 78 in front of you, then I'm going to
21 follow up.

22 A. (Complies with request.) Okay.

23 Q. So the Troy Police Department retrieved your memo
24 book entries and we've been provided with copies of

1 the last two pages of your memo book, which I'm
2 going to have marked as Exhibit 13. And I'll show
3 them to you.

4 (French Exhibit 13 was marked for
5 identification.)

6 | BY MR. TORCZYNER:

7 Q. I show you now those pages from the memo book.
8 Take a look at them. Let me know when you're done,
9 please.

10 A. (Complies with request.) Okay.

11 Q. Having reviewed these two pages of the memo book,
12 do you recall whether any of the entries made on
13 these pages were made on that overnight shift
14 starting on the 16th into the 17th of April 2016?

15 A. No, I don't.

16 Q. Is there any document that you can think of that
17 would show the arrests that you made on the morning
18 of the 17th of April, prior to your interaction
19 with Edson Thevenin?

20 A. Unless there was an arrest report, but he -- that
21 arrest that I said I made wasn't really my arrest.
22 It was Zone's 1's arrest. I just got the guy in
23 custody and handed him off, so I didn't -- I don't
24 believe I even processed that guy.

1 Q. Okay.

2 A. But if there was an arrest report -- I can't
3 remember the guy's name off the top of my head --
4 that would do it.

5 Q. Okay. So leaving aside the Zone 1 guy, can you
6 think of anything that would show arrests that you
7 made that night other than the actual arrest report
8 for the person who was arrested?

9 A. Maybe the arrest blotter.

10 MR. TORCZYNER: I'll call for production
11 of the arrest blotter. I'll follow up in
12 writing.

13 Let's go off for a second.

14 (There was a discussion off the record.)

15 BY MR. TORCZYNER:

16 Q. You're familiar with the police blotter?

17 A. Yes.

18 Q. Is the arrest blotter the same thing or is that
19 different?

20 A. It's different.

21 MR. TORCZYNER: We'll make the request in
22 writing for the arrest blotter for that shift.

23 MR. ASPLAND: Um-hmm.

1 BY MR. TORCZYNER:

2 Q. Anything else other than the arrest blotter and the
3 individual arrest reports, which are obviously
4 arranged by person, that would show the arrests you
5 made that night prior to interacting with Edson
6 Thevenin?

7 A. I don't believe I made any other arrests.

8 Q. Other than that Zone 1 involvement?

9 A. Correct.

10 Q. Do you recall writing tickets that night prior to
11 interacting with Edson Thevenin?

12 A. I don't recall, unless they're identified
13 certain... I just don't recall.

14 Q. I understand, and you've made that clear that you
15 don't recall.

16 MR. TORCZYNER: Let's go off for a
17 second.

18 (There was a discussion off the record.)

19 BY MR. TORCZYNER:

20 Q. The last time that you were here, we played for
21 you, through Mr. Aspland's associate, a video that
22 was shot of yourself and the Thevenin vehicle and
23 your police vehicle that was taken after the
24 shooting.

(RANDALL FRENCH - Volume II - July 13, 2018)

225

1 What I would like to do today, which I've
2 spoken to counsel about, is -- we have the radio
3 calls from that evening. I am going to play
4 approximately six or seven reports or statements
5 that were made.

6 I'm just going to ask you if they were you.
7 And if they were you, just to confirm what is
8 actually said in them. Some of them are not super
9 clear.

10 I will tell you that this was provided to me
11 by the Troy Police Department.

12 MR. ASPLAND: This is marked?

13 MR. TORCZYNER: This is marked as
14 Exhibit 12 in your disclosure to me.

15 For our purposes, we'll call it Exhibit 14
16 for purposes of the deposition, the same way
17 that we used -- when we did the video, it was
18 Montanino 8.

19 (French Exhibit 14 was marked for
20 identification.)

21 BY MR. TORCZYNER:

22 Q. So I'm going to hit "play." If you need me to
23 rewind it at some point, just let me know.
24 Starting from play.

1 (Audio is played.)

2 A. That's me.

3 Q. So that's -- from the very beginning of the radio
4 sequence starting from zero and going to 003, that
5 was you saying, "Traffic stop"?

6 A. Um-hmm. "112 traffic stop."

7 Q. 112 was your call?

8 A. Yes.

9 (Audio is played.)

10 | A. That is me.

11 Q. "Sixth between Jacob and Hoosick" was you.

12 Awesome. That's at 09.

13 (Audio is played.)

14 Q. And that is you identifying the license plate?

15 A. Um-hmm.

16 O. Okay. We're going to fast-forward to about 1:20.

17 (There was a discu

18

19 A. That's me.

20 Q. That's you, and you're talking to the guys at the
21 house party, asking if they're 10-4 to Zone 3?

22 A. Yes.

23 Q. At that point you were still at the traffic stop;
24 connect?

1 A. Yes.

2 Q. Going now to 1:50. These are all minutes and
3 seconds. I'm not going to go beyond an hour.

4 (Audio is played.)

5 A. That is me.

6 Q. Do you know what you were saying at that point?

7 A. Can you do it again?

8 Q. Sure.

9 (Audio is played.)

10 Q. It's now at 1:22. It's going back to the 1:25.

11 (Audio is played.)

12 A. It's something -- the only thing I can hear is "I,"
13 something, "hot mess." I can't make out what I
14 said.

15 Q. Okay. That's at 1:35. I'm going to let it play
16 out to 1:50, which is the next milestone.

17 (Audio is played.)

18 Q. Was that you speaking or that was someone else?

19 A. That was somebody else.

20 Q. That was someone else saying that they were going
21 to Zone 3? That is not you?

22 A. Yeah, that's my interpretation of what was said.

23 Q. I just wasn't sure whether it was you or not.

24 That's why I was asking.

1 Okay. We're now going to play from 4:50.

2 (Audio is played.)

3 Q. That was just -- that was from 4:39 to 4:50. That
4 was not you. That was them telling you they got
5 everybody out?

6 A. That was just them telling everybody. That's where
7 he said, you know --

8 Q. Telling everybody. Okay.

9 (Audio is played.)

10 Q. That is you?

11 A. That is.

12 Q. "112, he tried to run me over" and that's at 1535
13 or thereabouts. I'm saying that is where it is
14 in -- that was my narration.

15 This was all -- from the time that you were
16 starting this at the zero minute, zero second
17 point, this is from the time that you had pulled
18 over Mr. Thevenin in order to do, and then did, the
19 various DWI sobriety tests. Is that correct?

20 A. Yes.

21 Q. Okay. And at 1535, 1536, at some point that is
22 already you saying that "He tried to run me over";
23 correct?

24 A. Yes.

1 Q. Okay. I am going to play through from here to 1605
2 straight, and I think that that is everything. I
3 may stop at some point and I'll say what time it is
4 and I'll ask you a question at that point.

5 (Audio is played.)

6 A. That's me.

7 Q. I'm thinking "You on Sixth Ave" is you?

8 A. Yes.

9 Q. So you're back in the car at that point or are you
10 doing that with your radio on your shirt?

11 A. I think I was in the car. I can't be sure.

12 Q. When "he tried to run me over," you were in your
13 car or --

14 A. No, that was me getting up off the ground.

15 Q. Okay.

16 (Audio is played.)

17 A. Not me.

18 (Audio is played.)

19 A. Me.

20 Q. That's at 1548. That's you saying "An older
21 two-door Honda Accord"?

22 A. Yes.

23 (Audio is played.)

24 A. That is me.

1 Q. "Eastbound Hoosick" is at 1555.

2 (Audio is played.)

3 A. That is not me.

4 Q. That's not you. Does that sound like Sergeant
5 Montanino to you?

6 A. Captain Montanino.

7 Q. Captain Montanino. Thank you. Okay.

8 That was at 1558 to 1603.

9 (Audio is played.)

10 Q. "You're on the Collar City Bridge." That is not
11 you?

12 A. (Witness shakes head.)

13 Q. Is that you saying "Get up, get up here"?

14 A. No.

15 Q. That was at 1614.

16 (Audio is played.)

17 A. I don't think you're going to hear me at all
18 anymore, but you obviously want to listen to it.

19 (Audio is played.)

20 A. That's not me.

21 Q. That is not you. That's at 1654.

22 (Audio is played.)

23 Q. Is that you?

24 A. No.

1 Q. That ends at 17:1.

2 So "Shots fired here" is not you?

3 A. No.

4 Q. Okay.

5 MR. TORCZYNER: All right. That's all we
6 needed from the audio. Thank you.

7 Off the record for a second.

8 (There was a discussion off the record.)

9 BY MR. TORCZYNER:

10 Q. Do you remember being asked questions during your
11 prior deposition about reports that you had
12 prepared for Mr. Safranko or that you supplied to
13 Mr. Safranko?

14 A. Yes.

15 Q. So, there was a lengthy set of papers and argument
16 before the judge, who, over your counsel's
17 objection, has provided me with copies of those
18 reports. There was -- the judge wrote a lengthy
19 decision where he discussed everyone's arguments
20 and allowed me to view copies of them. So we're
21 going to be marking them as exhibits and I'm going
22 to be asking you some questions about them.

23 (French Exhibit 15 was marked for
24 identification.)

1 BY MR. TORCZYNER:

2 Q. I'll show you now a document that's been marked as
3 Exhibit 15. Please take a look at it and let me
4 know when you're done.

5 A. Okay.

6 Q. I'm going to ask you a question on this report and
7 it's going to apply to each of the next three
8 documents that I'm going to be asking you about.

9 Is there anything in this report that is in
10 front of you that is information that was provided
11 to you by Mr. Safranko?

12 A. Not that I believe.

13 Q. In the event that I ask you something that requires
14 information that came from Mr. Safranko, you need
15 to let Mr. Aspland know. The same way I told you
16 that I don't want to know anything that Mr. Aspland
17 told you, I don't want to know anything that
18 Mr. Safranko told you. I won't know that it's the
19 source until after you've already said it.

20 Did you prepare this report yourself?

21 A. Yes.

22 Q. Did you prepare this in and around April of 2016?

23 A. Yes.

24 Q. Did anyone provide you information to prepare this

1 report?

2 A. Yes.

3 Q. Who provided you with information that you used in
4 order to prepare this report?

5 A. I don't remember.

6 Q. Do you see that on the origination information
7 section on page 1, it indicates that the command
8 officer approving pursuit was Captain Montanino?

9 A. Yes.

10 Q. Did Captain Montanino actually approve the pursuit?

11 A. No.

12 Q. That was just entered because he was your
13 commanding officer?

14 A. Well, he took part in the pursuit and didn't call
15 me off. I took that to mean it was approved.

16 Q. If you go down towards the bottom of the page, it
17 indicates "Damage to vehicle."

18 Do you see that?

19 A. I do.

20 Q. And it indicates damage to TPD30.

21 Was that your vehicle?

22 A. Yes.

23 Q. It says, "Scrapes and dents all along driver's
24 side."

- 1 Did you put that in?
- 2 A. I did.
- 3 Q. Do you recall observing scrapes and dents on the
- 4 driver's side of your car?
- 5 A. No.
- 6 Q. So where did that information come from?
- 7 A. Somebody told me.
- 8 Q. Do you recall anything about the conversation?
- 9 A. No.
- 10 Q. Had you seen pictures of your vehicle prior to
- 11 preparing this report?
- 12 A. No.
- 13 Q. Do you recall anything about the conversation other
- 14 than someone telling you that there were scrapes
- 15 and dents on the driver's side?
- 16 A. No.
- 17 Q. Did you see below it there's the entry, "Patrol
- 18 captain's vehicle"?
- 19 A. Yes.
- 20 Q. And it indicates, "Damage to front bumper and
- 21 grille."
- 22 A. Yes.
- 23 Q. Did you put that information in this report?
- 24 A. Yes.

1 Q. Do you know where you got that information?

2 A. No.

3 Q. Was that the same conversation or a different
4 conversation?

5 A. I don't know.

6 Q. Let's go to the second page, please.

7 Do you see on the second line, it indicates,
8 "Officer Dean requested a vehicle description which
9 RO provided"?

10 A. Yes.

11 Q. When you provided that -- withdrawn.

12 Is that accurate?

13 A. Is what accurate?

14 Q. Is the statement "Officer Dean requested a vehicle
15 description, which RO provided," is that accurate?

16 A. Yes.

17 Q. When you wrote this, did you know that Officer Dean
18 had been the individual who requested the vehicle
19 description?

20 A. Yes.

21 Q. At the time that the request was made, was it made
22 over the radio?

23 A. Yes.

24 Q. Did you know that it was Officer Dean making that

1 request?

2 A. Yes.

3 Q. Put that on the stack, please.

4 (French Exhibit 16 was marked for
5 identification.)

6 BY MR. TORCZYNER:

7 Q. I'm going to show you now a document that has been
8 marked Supplemental Report, which is Exhibit 16.
9 Let me know when you're done, please.

10 A. I'm done.

11 Q. Did you prepare this?

12 A. Yes.

13 Q. It indicates April 26, 2016, as date of the report.
14 To your recollection, is that when you prepared it?

15 A. I imagine it is.

16 Q. But you don't -- as we sit here today, you're not
17 certain?

18 A. I can't say for sure, no.

19 Q. Why did you fill out a supplemental report?

20 A. I believe -- I don't exactly remember why. It was
21 something I believed that I had to do, but I don't
22 remember why.

23 Q. The previous document that we've discussed, which
24 is still in the middle of the table, the

1 post-pursuit report, that was something that you
2 were required to do by regulation; correct?

3 A. Yes.

4 Q. Why would someone prepare a supplemental report,
5 generally?

6 A. As an addendum or a supplement to another report
7 that has been created.

8 Q. Did you know -- or as you sit here today, do you
9 know what this was supplemental to?

10 A. I believe this was because I was injured in the
11 line of duty.

12 Q. Okay.

13 A. Again, that's the best of my recollection. I very
14 well could be wrong.

15 Q. When it says, "Type of original report," it says,
16 "3205." What's a 3205?

17 A. A New York State standardized incident report.

18 MR. TORCZYNER: Off the record.

19 (There was a discussion off the record.)

20 MR. TORCZYNER: Back on the record,
21 please.

22 BY MR. TORCZYNER:

23 Q. It says, "Control number 38338." Where did that
24 number come from, if you know?

1 A. That was the control number assigned to my traffic
2 stop and subsequent arrest -- pursuit, excuse me.

3 Q. Do you know how you got that number?

4 A. I don't remember, no.

5 Q. Now, in case status it says, "Closed not cleared"
6 on the first line.

7 Do you see that?

8 A. Yes.

9 Q. Where did that come from? Withdrawn.

10 Why did you mark "Closed not cleared" on this?

11 A. It's closed or not cleared. I checked that because
12 this case is closed.

13 Q. How did you know the case was closed?

14 A. Because Mr. Thevenin was dead.

15 Q. Let's go to the last one in these sequence.

16 (French Exhibit 17 was marked for
17 identification.)

18 BY MR. TORCZYNER:

19 Q. I'm going to show you now a document that has been
20 marked French 17. It's a City of Troy Police
21 Department response to resistance report.

22 Take a look at it and let me know when you're
23 done, please.

24 A. (Complies with request.)

1 (There was a discussion off the record.)

2 MR. TORCZYNER: Back on the record.

3 | BY MR. TORCZYNER:

4 Q. I've shown you now a document that has been marked
5 as French 17. Did you prepare this document?

6 A. Yes.

7 Q. Did you receive any information from anyone else in
8 order to prepare this document?

9 A Yes

10 Q. As you look at this document right now -- you know,
11 let's go through point by point the questions, and
12 you let me know if at any point this was
13 information that came from an outside source.

14 You see where it talks about the photographs
15 taken of the injury on the first page?

16 A Under "Officer information"?

17 | 0 Yes

18 | A Yes

18 Q That would be photos taken of you; correct?

20 A Yeo

21 Q. Where it says, "Officer" -- it's Furciniti? And it
22 indicates that the medical facility treating
23 physician was St. Mary's ER.

24 Do you see that?

1 A. Oh, you're looking under "Suspect Information" now?

2 Q. Yes.

3 A. Yes.

4 Q. Still on the first page.

5 Was that information that you were aware of or
6 was that provided to you?

7 A. Provided to me.

8 Q. Do you know who provided that information to you?

9 A. No.

10 Q. Do you know when you were provided that
11 information?

12 A. No.

13 Q. Do you recall anything about the conversation?

14 A. No.

15 Q. It says, "Photographs taken of the injury," "Yes."

16 Was that also information you were given or
17 that's information that you...

18 A. That was given to me. And no, I don't recall who.

19 Q. And when it says, "Photographer ET," we're talking
20 about some evidence technician; correct?

21 A. Yes. I figured I'd fill that information in later
22 when I had it.

23 Q. Can you go to page 3, please.

24 See on the right side it says, "Pepper ball

1 OC"?

2 A. Yes.

3 Q. What is a pepper ball?

4 A. It's pretty much a paint ball gun that uses balls

5 of pepper.

6 Q. And it says, "Not applicable" because you didn't

7 deploy that; correct?

8 A. Correct.

9 Q. Have you ever deployed a pepper ball OC?

10 A. Yes.

11 Q. And directly below that it has, "Duty firearm" and

12 it says, "Pistol"?

13 A. Yes.

14 Q. There is a listing of number of shots, number of

15 hit targets -- number of hits to target.

16 Do you see that?

17 A. Yes.

18 Q. Did you fill in this information?

19 A. Yes.

20 Q. Did someone provide you with number of shots,

21 eight, or did you know that yourself?

22 A. Somebody told me that.

23 Q. Do you know who told you that?

24 A. Yes. At the hospital, Officer Dean advised me that

1 my pistol had one remaining shot in it and I knew
2 it held nine total.

3 Q. It says, "Number of hits to target" is five.

4 A. Yes.

5 Q. Did you know that or did someone provide you that
6 information?

7 A. Somebody told me that.

8 Q. Do you know who told you that?

9 A. No.

10 Q. Do you recall anything about the conversation where
11 you were told about the number of hits to target?

12 A. No.

13 Q. Did anyone ever tell you where the hits were on
14 the -- that the bullets made on Mr. Thevenin?

15 A. Yes.

16 Q. What were you told about that?

17 A. I was told he had one shot to the lung, one shot to
18 the heart and, if I remember correctly, one round
19 to the right forearm and one round to the right
20 shoulder, and then one round to the face.

21 Q. Do you recall observing any of those bullets hit
22 any of the body parts you've just discussed?

23 A. No.

24 Q. Did you see any of the shots make impact to

1 Mr. Thevenin?

2 A. No.

3 Q. I don't know if I asked this in the questions

4 before, but do you recall who told you about which

5 body parts were impacted by your bullets?

6 A. No.

7 Q. Did you know those body parts when you filled out

8 the report or is that something you found out

9 afterwards?

10 A. I don't know.

11 Q. Now, the diagram on this has nothing marked for

12 suspect.

13 A. Correct. I would have done that when I printed

14 this out and submitted it.

15 Q. So you never printed this document?

16 A. No.

17 Q. It was always on the computer?

18 A. Yes.

19 Q. Okay. You see the -- let's go over to the next

20 page, the Response to Resistance narrative.

21 I don't know if you read this through before

22 or if you did not. If you didn't read it before,

23 then please read it now and then I'll get into it.

24 A. I read it.

1 Q. So let's -- rather than having you read this all
2 into the record or me read it into the record, I'm
3 going to draw your attention down to where it says,
4 "RO pursued the vehicle." It's about a dozen or so
5 lines from the bottom in the center of the line.

6 A. I'm there.

7 Q. So it reads, "RO pursued the vehicle, which
8 subsequently crashed WB," which is westbound, "on
9 the Collar City Bridge."

10 You wrote that; correct?

11 A. Yes.

12 Q. In fact, everything on this page is what you've
13 written; correct?

14 A. Yes.

15 Q. Did anyone provide you with any information that's
16 on this page?

17 A. Yes.

18 Q. Did anyone provide you with any of the information
19 above the part that we've just read?

20 A. No.

21 Q. The next line reads, "RO exited his patrol car in
22 order to arrest the suspect."

23 Is that accurate?

24 A. Yes.

1 Q. Did anyone provide you with that information?

2 A. No.

3 Q. The next line says, "The suspect then drove into RO
4 and pinned RO's left knee against his patrol
5 vehicle."

6 Did someone provide you with that or did you
7 know that on your own?

8 A. I knew that on my own.

9 Q. The next line, "The suspect continued to keep the
10 engine revved in an attempt to continue driving."

11 Is that your information or did someone
12 provide that to you?

13 A. That's my information.

14 Q. "RO tried to pull himself free, but was unable to
15 do so."

16 Is that your information or did someone
17 provide that to you?

18 A. My information.

19 Q. "As RO felt his leg was about to break, which he
20 believed would cause him to fall under the suspect
21 vehicle and be killed, RO fired two rounds through
22 the windshield at the suspect."

23 Is that your information?

24 A. The part about the rounds I was told. I personally

1 did not know how many rounds I fired at that point.

2 Q. When were you told that it was two rounds?

3 A. I don't remember.

4 Q. This report, was it filled out in and around the
5 same time as the other two reports that we've been
6 discussing?

7 A. Yes.

8 Q. Did you know that it was two rounds when you
9 testified before the grand jury?

10 A. I don't remember if I knew at that point.

11 Q. Who told you that it was two rounds?

12 A. I don't know.

13 Q. When were you told that?

14 A. I don't know.

15 Q. What do you recall about the conversation?

16 A. Only that the first volley of shots was two and the
17 second was six. Outside of that, I don't remember.

18 Q. Do you recall whether it was Matthew Montanino that
19 told you that?

20 A. I don't know.

21 Q. Do you think that it could have been?

22 MR. ASPLAND: Objection.

23 A. I don't know.

24

1 BY MR. TORCZYNER:

2 Q. It's unlikely that it would have been Matthew
3 Montanino, to your...

4 MR. ASPLAND: Objection. You're asking
5 him to speculate as to the likeliness of
6 whether or not it was Captain Montanino that
7 told him this information?

8 MR. TORCZYNER: I'm asking him, in his
9 own recollection whether he thinks it's likely
10 that that was the person he spoke with, since
11 he doesn't remember.

12 MR. ASPLAND: I don't think -- I think
13 that's the same thing as asking him to
14 speculate as to whether or not it was Captain
15 Montanino, and I believe the direction you
16 gave him was you didn't want him to speculate
17 or guess and you're asking him to do that.

18 MR. TORCZYNER: On this one he doesn't
19 know. So yes, generally I don't want him to
20 guess, but I want --

21 MR. ASPLAND: But isn't that the answer,
22 though? If he doesn't know, he doesn't know.
23 Isn't that the answer?

24 MR. TORCZYNER: Okay.

1 BY MR. TORCZYNER:

2 Q. Do you recall talking to Matthew Montanino after
3 the events on the Collar City Bridge and before you
4 filled out this report?

5 A. I don't remember if I did or not.

6 Q. Did you ask the person how they knew that it was
7 two shots in the first volley?

8 A. If I did, I don't remember.

9 Q. How did you know it was right?

10 A. I didn't.

11 Q. So why did you put it in the report?

12 A. It was a draft that I was going to then follow up
13 with to make sure it was accurate.

14 Q. As we sit here today, do you have any knowledge of
15 how many shots were in the first volley?

16 A. I've been told -- the reconstruction, that it was
17 two.

18 Q. I don't want to know about conversations -- if you
19 got that information from Mr. Aspland. But did you
20 get that information from someone other than
21 Mr. Aspland?

22 A. Yes.

23 Q. Who told you that it was two?

24 A. I don't remember.

1 Q. Is that the first thing on this page that came from
2 an outside source?

3 A. Yes.

4 Q. When those first two rounds were fired, did you see
5 Mr. Thevenin's face?

6 A. I don't remember.

7 Q. Did you see Mr. Thevenin's hands when you fired
8 those first two shots?

9 A. I don't remember.

10 Q. Did anyone tell you the position of Mr. Thevenin's
11 face when those shots were fired?

12 A. No.

13 Q. Has anyone ever told you the position of
14 Mr. Thevenin in his vehicle at any point during
15 this incident?

16 A. I don't think so.

17 Q. Let's go to the next line, please. "The suspect
18 turned the car and continued to keep the engine
19 revved."

20 Is that your information or did someone give
21 that to you?

22 A. My information.

23 Q. Did you see Mr. Thevenin turn the steering wheel?

24 A. No.

1 Q. Did you actually see the steering wheel turn?

2 A. No.

3 Q. Did you see the tires turn?

4 A. No.

5 Q. When it says "keeping the engine revved," was it a
6 constant sound or was it a cyclical sound, if you
7 understand what I'm asking?

8 A. I understand. It was constant.

9 Q. Looking at the balance of what's on this page, is
10 there any other information that was provided to
11 you?

12 A. Yes.

13 Q. Let's go forward. "This turn caused RO's left leg
14 to twist and forced RO onto the hood of the
15 suspect's vehicle."

16 Is that your information or information
17 provided to you?

18 A. I'm sorry. I just went forward. I did indicate on
19 here that I could see the suspect turning the
20 steering wheel. I see that in here. I don't
21 recall that off the top of my head now, but
22 going -- please restate the question. I apologize.

23 MR. TORCZYNER: Could you read back what
24 he just said, please.

Q: "This turn caused RO's left leg to twist and forced RO onto the hood of the suspect's vehicle."

Is that your information or information provided to you?)

6 MR. ASPLAND: And then he had an answer,
7 which is what Neil was asking you to read
8 back.

11 A: I did indicate on here that I could
12 see the suspect turning the steering wheel. I
13 see that in here. I don't recall that off the
 top of my head now, but going -- please
 restate the question. I apologize.)

14 | BY MR. TORCZYNER:

15 Q. Okay. So let's go back to the question that I
16 asked.

17 "This turn caused RO's left leg to twist and
18 forced RO onto the hood of the suspect's vehicle."

19 Was that your information or was that
20 information provided to you?

21 A. That was my information.

22 Q. "As RO's leg was still pinned and RO could see the
23 suspect turning the steering wheel and he continued
24 to keep the engine revved, RO fired six more shots

1 through the windshield at the suspect."

2 Do you see that long sentence that I just
3 read?

4 A. I do.

5 Q. As we sit here today, do you recall seeing the
6 suspect turning the steering wheel?

7 A. Sitting here today, no, I do not.

8 Q. Do you know whether that information, where it says
9 that the suspect was turning the steering wheel,
10 was something that was provided to you?

11 A. That would not have been provided to me, no.

12 Q. The "six more shots" was provided to you; correct?

13 A. Yes.

14 Q. Is there anything else in that sentence that was
15 provided to you?

16 A. In that sentence? No.

17 Q. Now, the last sentence, "The suspect was then taken
18 into custody by other officers."

19 That was provided to you; correct?

20 A. Yes.

21 Q. As we sit here today, do you recall which way the
22 suspect was turning the steering wheel, if you
23 recall it at all?

24 A. No.

1 Q. Do you recall -- I think I asked this already, but
2 you don't recall him turning the steering wheel as
3 we sit here today?

4 A. As we sit here today, no.

5 MR. TORCZYNER: We've got one other
6 document that we're going to mark.

7 (French Exhibit 18 was marked for
8 identification.)

9 BY MR. TORCZYNER:

10 Q. What I'm going to ask you to do, because this came
11 up during your last deposition is take a look at
12 French Exhibit 11, which was General Order 6.02.
13 As you may recall, during your deposition we
14 realized that the general order had gone into
15 effect six days before the incident.

16 THE WITNESS: Before we get into this, do
17 you mind if I take a restroom break?

18 MR. TORCZYNER: Of course not. Go ahead.

19 (A break was taken in the proceedings.)

20 BY MR. TORCZYNER:

21 Q. I am going to show you now what's been marked as
22 French 18. And this is the prior version of the
23 same general order, which I'm going to ask you to
24 take a look at and briefly compare.

1 A. (Complies with request.)
2 Q. Can you read to yourself Sub (C) in both the prior
3 document that was marked 11 and the new that is
4 marked 18.

5 A. (Complies with request.)

6 Q. You would agree with me that Sub (C), although the
7 spacing on the letters is different, it is
8 essentially the same thing in both of these
9 policies; is that correct?

10 A. Yes.

11 Q. And the -- other than the way that the letters are
12 laid out on the page, they're essentially the same;
13 that's correct?

14 A. Yes.

15 Q. And Sub (C) was the operative aspect of the general
16 order that was governing your use of your firearm
17 with Mr. Thevenin; correct?

18 A. Yes.

19 Q. I have nothing further on that document. Thank
20 you.

21 Do you recall testifying before the grand jury
22 in relation to Mr. Thevenin?

23 A. Yes.

24 Q. I'm talking about the grand jury that was convened

1 in April of 2016.

2 A. Yes.

3 Q. There is a document underneath that's a book of the
4 testimony that was given.

5 Have you ever reviewed your grand jury
6 testimony?

7 A. No.

8 Q. I'm going to represent to you that your grand jury
9 testimony was provided, after numerous motions by
10 Judge Stewart, and that it's contained in that
11 booklet.

12 MR. TORCZYNER: Counsel and I have
13 discussed that we will stipulate to the fact
14 that this grand jury exhibit, that is marked
15 as Grand Jury, is the volume that was provided
16 to us by the Court pursuant to the court
17 order. So stipulated?

18 MR. ASPLAND: So stipulated.

19 (French Exhibit Grand Jury was marked for
20 identification.)

21 BY MR. TORCZYNER:

22 Q. Do you recall testifying specifically or just that
23 you testified?

24 A. I recall specifically.

1 Q. Do you recall -- after testifying before the grand
2 jury, do you recall thinking at some point that
3 anything that you testified to before the grand
4 jury was inaccurate?

5 A. No.

6 MR. TORCZYNER: I have nothing further
7 for you.

8 John, do you have any questions for him?

9 MR. ASPLAND: I don't.

10 MR. TORCZYNER: Thank you for coming
11 down.

12 (Whereupon, the examination of RANDALL
13 FRENCH, in the above-entitled matter was
14 concluded at 12:43 p.m.)

15 * * * * *

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24

1 STATE OF NEW YORK)
2 COUNTY OF)
3
ss.

4 I, RANDALL FRENCH, have read the foregoing record
5 of my testimony taken at the time and place noted in the
6 heading hereof, and I do hereby acknowledge it to be a
7 true and accurate transcript of same.

8

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DATED: 8/24/18

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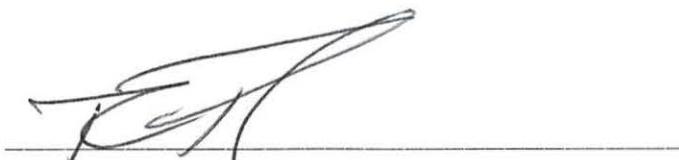
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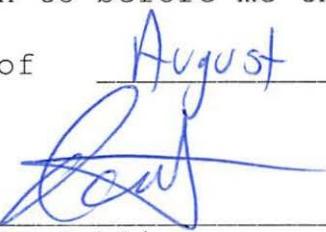
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RANDALL FRENCH

Sworn to before me this 24th
day of August, 2018


Notary Public

1 C E R T I F I C A T I O N
2

3 I, ELLEN J. FRANKOVITCH, a Shorthand Reporter and
4 Notary Public within and for the State of New York, do
5 hereby CERTIFY that prior to being examined, the witness
6 named in the foregoing deposition was duly sworn to
7 testify the truth, the whole truth and nothing but the
8 truth.

9 That said deposition was taken down by me in
10 shorthand at the time and place therein named and
11 thereafter reduced by me to typewritten form and that
12 the same is a true, correct and complete transcription
13 of said proceedings.

14 Before completion of the deposition, review of the
15 transcript was requested. If requested, any changes
16 made by the deponent (and provided to the reporter)
17 during the period allowed are appended hereto.

18 I further certify that I am not interested in the
19 outcome of this matter.

20 Witness my hand this 25th day of July, 2018.

21
22 
23

24 ELLEN J. FRANKOVITCH

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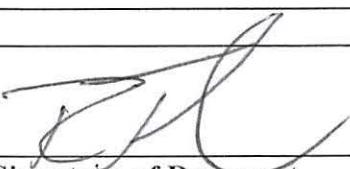
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220 4 Crew not center
5 I know this is our scheduling

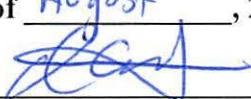
224 12 unless they're identified certain - I'm
not sure what this is supposed to say



Signature of Deponent

Randall C. French

Sworn to before me this 24th
day of August, 2018.



Notary Public – State of New York

